Office of Children and Family Services

Child Protective Services Manual

2019

Chapter 1: Introduction to Child Protective Services

A. Purpose and scope of the CPS Manual A-1

B. New York State's Child Welfare Practice Model B-1

C. Definition of protective services for children C-1

D. Child Protective Services organizational requirements D-1

E. Purpose of CPS E-1

F. Immunity F-1

G. Laws, regulations, and policies G-1

1. Laws G-1
2. Regulations G-1
3. Policies G-1
4. Guidance based on best practices G-2

H. Considerations for special populations H-1

1. Services for persons with limited English proficiency (LEP) H-1
2. Compliance with the Indian Child Welfare Act H-1
3. Working with Immigrant Families H-4

Chapter 2: Reporters

A. Mandated reporters A-1

1. Professions classified as mandated reporters A-1
2. Reporting requirement applicable to social services workers only A-2
3. Reporting procedures A-3
4. Provision of records by mandated reporters A-5
5. Photographs and x-rays A-5
6. Reporting procedures for institutions with multiple mandated reporters A-5
7. Mandated reporter access to results of the investigation A-7
8. Failure to report A-7

B. Immunity provisions for reporters B-1

C. OCFS Model Policy on Reporting Educational Neglect C-1

D. Protective custody by certain mandated reporters D-1

1. Procedures for removals D-1

2. Persons in charge of hospitals D-2
3. Other medical personnel D-2
4. Immunity pertaining to protective custody D-2

Chapter 3: Statewide Central Register responsibilities

A. Intake A-1
1. Overview A-1
2. Elements required to register a report A-2
3. Receiving and registering reports A-3
4. Report construction A-4
5. Sensitive reports A-6
6. Quality assurance A-6
7. Withdrawal of reports A-6
8. Joint jurisdictional assignment A-7
9. Changing jurisdictional responsibilities after intake A-10

B. Responses to calls not qualifying as reports B-1
1. Law Enforcement Referrals (LERs) B-1
2. Reports regarding youth in OCFS residential care B-1
3. Information referrals B-1
4. Complaints about teachers B-2

C. SCR Service Center operations C-1
1. Overview C-1
2. SCR Database Checks C-1
3. Administrative appeal C-2
4. Early expungement of unfounded reports C-7
5. Expungement of reports due to passage of time. C-8
6. Requests for information C-8
7. Confidentiality regarding SCR Service Center inquiries C-8

Chapter 4: Special circumstances in report processing

A. Multi-district jurisdictional assignment A-1
1. Primary and secondary responsibilities A-1

2. Jurisdictional assignment changes in open cases A-3

B. Different types of CPS reports B-1

1. Duplicate reports B-1
2. Additional Information reports B-1
3. Subsequent reports B-2
4. Consolidating Report Investigations and Consolidating FAR Stages: B-3

C. Out-of-town inquiries C-1

1. Out-of-state inquiries C-1
2. District-to-district inquiries C-1

D. Guidelines for case transfers D-1

1. Transfers – Pre-determination or case closing D-1
2. Transfers – Indicated/Open services CPS cases D-2
3. Movement out of state D-2

E. Sensitive and high-profile investigations E-1

1. Transferring a sensitive case to another LDSS E-1

Chapter 5: Family Assessment Response (FAR)

A. Introduction to Family Assessment Response (FAR) A-1

1. Definition and description of FAR A-2
2. Requirements for LDSS participation A-2

B. Reports eligible for FAR B-1

1. Restrictions on assigning reports to FAR B-1
2. Allegations ineligible for FAR B-1
3. LDSS criteria for FAR inclusion B-2

C. Determining the appropriate track assignment C-1

1. Initial track assignment C-1
2. Finalizing the track assignment C-2
3. When parents disagree about FAR participation C-3
4. Time limit for final track assignment C-4
5. Documenting the rationale for the track assignment C-4

D. Conducting the family assessment D-1

1. Initial contact with the family D-1

2. Required casework activities D-2
3. Closing a FAR report D-7

E. Safety and risk assessments E-1

1. Initial safety assessment in FAR E-1
2. Individual contacts E-1
3. CPS history review E-3
4. Conducting the initial safety assessment E-3
5. Documentation of the initial safety assessment E-4
6. Ongoing safety assessments E-4
7. Risk assessment E-5

F. Documenting FAR activities F-1

G. Changing to investigation track after seven days G-1

H. Addressing a subsequent report for an open FAR case H-1

1. Subsequent report assigned to CPS investigative track H-1
2. Subsequent report assigned to the FAR track H-1

I. FAR administrative requirements I-1

1. Education and training of workers I-1
2. Supervision I-1
3. Case assignments I-1
4. Contracting for FAR activities I-1

J. Confidentiality provisions J-1

1. Entities with access to FAR records J-1
2. Court access to FAR records J-1
3. Law enforcement J-2
4. Mandated reporters J-2
5. Re-disclosure of FAR information J-2

K. Hearings and expungements K-1

Chapter 6: Child Protective Services investigations

A. Summary of statutory requirements regarding CPS investigations0 ..... A-1

B. Summary of regulatory requirements for addressing CPS reports and investigations B-1

1. Initiation of the investigation B-1
2. Full investigation B-2
3. Other Investigative Activities B-3

C. Intake of reports by the LDSS C-1

1. Procedures for receiving reports from the SCR C-1
2. Procedures for CPS workers making reports to the SCR C-1
3. Checking information received from the SCR C-2

D. Preliminary and ongoing safety assessments D-1

1. Preliminary safety assessment D-1
2. The safety assessment process7F D-2
3. Safety Factors D-3
4. Safety decision D-8

E. CPS Risk Assessment Profile (RAP) and services E-1

1. The Risk Assessment Profile E-1
2. Risk rating and the provision of services E-2
3. Risk rating and case determination E-3
4. Referrals for early intervention services E-3

F. Interviews F-1

1. Interviewing the source of the report F-1
2. Interviewing the family F-2
3. Interviews with children F-5
4. Interviews with collateral contacts F-9
5. Follow-up contacts with household members F-10
6. Uncooperative subjects13F F-11

G. Obtaining information about physical injuries and health G-1

1. Observation of physical injuries G-1
2. Medical examinations and evaluations G-4
3. Photographs G-7

H. Evaluation of need for protective removal H-1

I. CPS investigation progress notes I-1

J. Special considerations for cases with infants J-1

1. Safe Sleep J-1
2. Positive toxicology of newborns J-3
3. Early intervention referrals J-5

K. Child fatalities K-1

1. 24-Hour Fatality Report and 24-Hour Safety Assessment K-1
2. 30-day fatality report and 30-day safety assessment K-2
3. Conclusion safety assessment K-3
4. Investigation of re-reports of child fatalities K-3
5. LDSS responsibilities for reporting child fatalities K-4

L. Collaborating with the Criminal Justice System L-1

1. Overview L-1
2. Communication with district attorney and police agencies L-1
3. Development of cooperative investigative procedures with the district attorney .. L-4
4. Coordinating CPS and criminal investigations L-4
5. Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs) L-7
6. Missing or abducted children25F L-8

M. Commercial sexual exploitation of children and human trafficking M-1

1. Overview of sex trafficking M-1
2. Child Welfare requirement to screen for sex trafficking M-2
3. Requirement to report sex trafficking M-2

N. Domestic violence N-1

1. Indicators of domestic violence N-2
2. Considerations for conducting a CPS investigation when there is domestic violence N-3
3. CPS interventions when there is domestic violence N-4
4. CPS determination decisions in relation to domestic violence N-6
5. Coordination in cases with domestic violence N-8

O. Determinations / Investigation conclusions O-1

1. Standards for making a determination O-1
2. Indicated reports O-2
3. Unfounded reports O-3
4. Determining the investigation conclusion closure reason O-4

P. Case closing P-1

1. Decision P-1
2. Other considerations and procedures for closing a case P-2

Chapter 7: Investigations in foster homes and child day care programs

A. Overview A-1

1. Foster care A-1
2. Child day care A-1

B. CPS investigations in foster boarding homes B-1

1. Intake of reports B-1
2. Entering information in CONNX B-1
3. Jurisdictional assignments B-2
4. Changing/updating reports received from SCR B-2
5. Notifications B-3
6. Requirements for investigations in foster boarding homes B-5
7. Sharing of information B-6
8. Determination of an investigation in a foster boarding home B-7
9. Post-determination actions B-8

C. CPS investigations in child day care programs C-1

1. Types of child day care in New York State C-1
2. Oversight responsibility for child day care programs C-2
3. Intake of reports involving day care programs C-3
4. Requirements for investigations in child day care settings C-6
5. Notifications for a day care report C-7
6. Interviewing collateral contacts C-8
7. Safety and risk assessments C-8
8. Sharing information C-9
9. Determination of the day are investigation C-9
10. Other Actions C-10

Chapter 8: Service provision and development of a FASP with a protective program choice

A. Overview of statutory requirements for providing services A-1

B. Regulatory requirements for services during the course of an investigation . B-1

C. Direct provision of services by CPS C-1

1. General requirements for the direct provision of services by CPS C-1
2. Casework contact requirements when CPS is the primary service provider C-2
3. Additional guidance regarding service provision C-3

D. Development of the Family Assessment and Service Plan (FASP) D-1

1. Assignment of case roles D-3
2. CPS Safety Assessment D-4
3. Family/child information and updates D-5
4. Strengths, Needs, and Risks Assessment D-5
5. Risk Assessment Profile D-5
6. Family Assessment Analysis D-5
7. Service Plan D-6
8. Plan amendments (status changes) D-7

E. CPS as Service Monitor E-1

1. General responsibilities E-1
2. Contacts with service providers E-2
3. Preparation, review, and approval of the FASP E-2
4. Sharing of information E-3

F. Uniform Case Record F-1

1. Background and purpose F-1
2. Requirements F-1

Chapter 9: Family Court Proceedings (Article 10)

A. Introduction to Article 10 proceedings A-1

B. Court-ordered CPS investigations B-1

C. Originating an abuse or neglect petition C-1

D. Court-ordered services D-1

E. Temporary orders, other than removal, to safeguard the child E-1

1. Types of orders E-1
2. Requirement to inform the parent(s) of CPS's intent to seek a court order E-2

F. Removing a child F-1

1. Search for placement resources F-2
2. Temporary removal with consent F-3
3. Removal without consent – temporary order F-4
4. Emergency removal without court order or parental consent F-6

G. Hearings after filing a petition for removal of a child G-1

1. Preliminary orders issued by the court at the hearing G-1
2. Other orders G-3

H. Summonses and required notifications H-1

1. Notice of pendency of a child protective proceeding H-1
2. Notice of removal for a non-custodial parent H-2
3. Intervention by other interested people H-2

I. Adjournment in contemplation of dismissal (ACD) I-1

1. Provisions for adjournment in contemplation of dismissal (ACD) I-1
2. Factors determining CPS's consent to an ACD I-2
3. CPS requirements for ACDs I-2

J. Rules and standards for Family Court hearings J-1

1. Rules and standards of evidence J-1
2. Sequence of hearings J-2
3. Sustaining or dismissing a petition J-2
4. Disposition on adjudication J-3

K. Disposition on adjudication K-1

1. Suspended judgment K-1
2. Release to a non-respondent parent, legal custodian, or guardian K-1
3. Placement in foster care K-2
4. Order of protection (OOP) K-6
5. Order of supervision K-7

L. Expiration of orders L-1

M. Termination of reasonable efforts in aggravated circumstances M-1

N. Termination of parental rights due to severe or repeated abuse..... N-1

1. Severely abused child..... N-1
2. Repeatedly abused child..... N-2

O. Abandoned child (under age one)..... O-1

Chapter 10: State Regional Offices

A. Overview..... A-1

1. Division of Child Welfare and Community Services..... A-1
2. Regional Offices A-1

B. Technical assistance B-1

C. Role in child protective investigations C-1

1. Foster Boarding Homes C-1
2. Child Care..... C-1
3. Near fatalities..... C-2
4. Fatalities C-2

D. Reviews D-1

1. Ongoing Monitoring Assessment (OMA) D-1
2. Safety and Permanency Assessment (SPA) D-1
3. Voluntary Agency Review (VAR)..... D-1

E. Institutional Abuse Investigations (IAB)..... E-1

Chapter 11: Child Fatality Reviews

A. Child Fatality Reviews A-1

1. Purpose of Child Fatality Reviews..... A-1
2. Role of OCFS in Child Fatality Reviews A-1
3. Role of Child Fatality Review Teams in Child Fatality Reviews A-2

B. Individual Child Fatality Review reports..... B-1

1. Contents of the Individual Child Fatality Review report B-1
2. Sharing the Individual Child Fatality Report B-2
3. LDSS Program Improvement Plans B-3

Chapter 12: Notifications

A. Notice of existence of a child protective report – familial setting A-1

B. Notice of existence of a child protective report – out-of-home setting B-1

1. Notifications to persons named in the reports B-1
2. Notifications when a child in foster care is placed out of district B-1

C. Determination notices C-1

1. Investigations – Notice of Indication C-1
2. Investigations – Notice of Unfounding C-1
3. Family Assessment Response – Notice of Case Closing C-2

D. Notification of the removal of a child D-1

E. Other notices to parents / families E-1

1. Notice when CPS is denied access to a child during an investigation E-1
2. Notice regarding the right to refuse services E-1

F. Notifications of a child's death F-1

1. Medical examiner or coroner F-1
2. District Attorney F-1
3. Law enforcement F-1
4. Office of Children and Family Services F-1

G. Notices of certain reports G-1

1. Law enforcement G-1
2. District Attorney G-1
3. Office of Children and Family Services G-1

H. Notification of report amendment or expungement H-1

Chapter 13: Confidentiality and legal sealing

A. Confidentiality of CPS records A-1

1. Requests for information A-1
2. Access to CPS records A-2
3. Releasing information to a criminal justice agency A-2
4. Releasing information to other agencies A-3
5. Releasing information to the public A-4

B. Legal sealing of unfounded CPS records B-1

Chapter 14: Appendices

A. Forms (non-CONNECTIONS) A-1

1. New York State Unified Court System (UCS) Family Court: Child Protective Forms A-1
2. New York State application for certain benefits and services (LDSS-2921 Statewide, [Rev. 7/16]) A-1
3. Plan of Safe Care (NYS OCFS Form-2196) A-1

B. Model letters B-1

1. Sharing of confidential client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA) B-1
2. Model letter – consent for temporary placement of child(ren) in foster care (pursuant to FCA §1021) B-3
3. Intent to ask Family Court for a temporary removal (per FCA §1023) B-4
4. Mandatory reporter consent to release identifying information B-5
5. Model notice of existence of a report (sent by a custodial agency where children are in foster care in a different social services district) B-6
6. Relative model notification letter B-7
7. Parent of sibling (model) notification letter B-9
8. Non-relative notification letter B-10

C. Alternative notice of existence of report letters C-1

D. Notice of child custody proceeding for Native American child D-1

E. Definitions of allegations related to child abuse and maltreatment E-1

1. Fractures E-1
2. Internal injuries E-2
3. Lacerations / Bruises / Welts E-3
4. Swelling / Dislocations / Sprains E-4
5. Choking / Twisting / Shaking E-5
6. Burns / Scalding E-5
7. Poisoning / Noxious substances E-6
8. Excessive corporal punishment E-7
9. Parent's drug / Alcohol misuse E-7
10. Child's drug / Alcohol use E-8
11. Lack of medical care / Medical neglect E-9

12. Educational neglect E-10
13. Emotional neglect E-12
14. Sexual abuse E-13
15. Allowing sex abuse to occur E-25
16. Malnutrition / Failure-to-thrive E-26
17. Inadequate food / clothing / shelter E-28
18. Inadequate guardianship E-28
19. Lack of supervision E-29
20. Abandonment E-30
21. Dead on arrival (DOA) / Fatality E-31
22. Other E-31

F. Standards of evidence for each child protective process stage F-1

G. Criminal justice system G-1

1. Types of crimes G-1
2. Specific crimes relating to child abuse and maltreatment cases G-1
3. Steps in the Criminal Justice process G-1

H. Title 6 of Article 6 of the Social Services Law H-1

I. Article 10 of the Family Court Act I-1

J. New York State regulations regarding child abuse and maltreatment: Part 432 – Codes Rules and Regulations J-1

K. Model memorandum of understanding K-1

1. Roles of and responsibilities of child protective services and the district attorney in investigations of child abuse and maltreatment K-1
2. Appointment of liaisons K-2
3. Referral of reports of suspected child abuse and maltreatment K-3
4. Identification and notification of law enforcement agencies K-4
5. Procedures for communication during joint CPS / law enforcement investigations of child abuse and maltreatment K-4

L. Child Fatality Investigations L-1

1. Fatality report checklists L-1
2. SCR reported fatality checklist L-2
3. Non-SCR reported fatality checklist L-5

4. Investigating sleep related fatality and injury CPS reports L-8
5. Making the determination L-10

M. Kinship Care M-1

N. Documentation guidelines for Family Assessment Response (FAR) cases N-1

1. Report received N-1
2. 24-hour assessment of safety N-1
3. Initial contact with the family N-1
4. Description of FAR, notification to the family, and agreement to participate N-2
5. 7-day safety assessment N-2
6. Family-Led assessment N-3
7. Engagement N-3
8. Solution focused practice N-4
9. Safety and Risk N-4
10. Family Led Assessment Guide (FLAG) N-5
11. Non-custodial or absent parent N-5
12. Collateral contacts N-6
13. Cultural competence N-6
14. Supervision N-6
15. Transition / Closing N-6

Chapter 15: Glossary of terms

Chapter 1: **Introduction to Child Protective Services**

A. Purpose and scope of the CPS Manual A-1

B. New York State's Child Welfare Practice Model B-1

C. Definition of protective services for children C-1

D. Child Protective Services organizational requirements D-1

E. Purpose of CPS E-1

F. Immunity F-1

G. Laws, regulations, and policies G-1

1. Laws G-1
2. Regulations G-1
3. Policies G-1
4. Guidance based on best practices G-2

H. Considerations for special populations H-1

1. Services for persons with limited English proficiency (LEP) H-1
2. Compliance with the Indian Child Welfare Act H-1
   - *a. Requirements when handling an ICWA case H-3*
3. Working with Immigrant Families H-4
   - *a. CPS Interaction with parents/caretakers who are not documented citizens of the United States H-4*
   - *b. Considerations for conducting a CPS investigation when parents/caretakers are not documented citizens of the United States H-4*
   - *c. Cultural considerations H-4*
   - *d. CPS determination decisions in relation to families who are not documented citizens of the United States H-6*
   - *e. Coordination in cases with families who are not documented citizens of the United States H-6*

Chapter 1: **Introduction to Child Protective Services (CPS)**

A. Purpose and scope of the CPS Manual

The purpose of the Child Protective Services (CPS) Program Manual is to provide a comprehensive guide that incorporates current law and regulation as well as policies and procedures for CPS.

The CPS manual describes all aspects of CPS cases in New York State, including the state requirements regarding making a report of suspected child abuse or maltreatment, the process of registering such reports, the means of investigating or using an alternative approach to address reports including in and out-of-home settings, the provision of services for reported families, and processes to use when safety concerns necessitate bringing a case to Family Court. In addition, the manual describes the roles of the regional and home offices of the New York State Office of Children and Family Services (OCFS) related to CPS, the process for reviewing the investigations of fatalities of children involved in the child welfare system, and state requirements for maintaining the confidentiality of child protective reports and for protecting the rights of people involved in the child protective system.

This manual is intended for use by staff of local departments of social services (LDSSs) in New York State, especially in their CPS units; and OCFS staff. It is available to the public on the OCFS website at http://ocfs.ny.gov.

B. New York State's Child Welfare Practice Model[1]

New York State's Child Welfare Practice Model establishes a consistent and recognizable approach to child welfare practice across New York State. Children, families, and adults are protected and supported to achieve safety, permanency, and well-being. The Practice Model is founded on these values:

- We believe children and adults have the right to be safe, and to have permanent families and lasting relationships.
- We listen first, then learn and proceed with knowledge, focusing on individual and family resources and strengths.
- We believe that services for children, families and adults must be individualized and culturally competent, recognizing and honoring differences in traditions, heritage, values and beliefs.
- We approach our work with a sense of urgency and persistence, recognizing and respecting a child and family's sense of time.
- We believe that high performing supervisors and caseworkers are key to building and sustaining an effective child welfare system.
- We value interagency collaboration.
- We believe in accountability for action and results.
- We strive for data-informed decision making.
- We value the principles of partnership:
  - Everyone desires respect.
  - Everyone needs to be heard.
  - Everyone has strengths.
  - Judgments can wait.
  - Partners share power.
  - Partnership is a process.

[1] http://ocfs.ny.gov/main/prevention/CW%20Practice%20Model.pdf

C. Definition of protective services for children

Protective services for children[2] are activities on behalf of children (persons under the age of 18) who are named in a report under investigation or an indicated report of abuse and/or maltreatment. The following activities may be considered protective services for children:

- Receipt of child abuse and/or maltreatment reports and either
  - an investigation of the report, including obtaining information from collateral contacts such as hospitals, school and police; or
  - the provision of a family assessment response to the report, including communicating with the family to identify concerns affecting family stability and assisting them to identify services and resources that will minimize future risk to a child
- Identification and assessment of a child's current safety and risk to the child of future abuse or maltreatment
- Making determinations, following investigations, whether there is some credible evidence of child abuse and/or maltreatment
- Providing counseling and training courses for the parents or guardians of the child, including parent aide services
- Arranging for counseling and therapy for individuals at risk of physical or emotional harm
- Arranging for emergency shelter for children who are suspected of being abused and/or maltreated
- Arranging for financial assistance, where appropriate
- Assisting the Family Court or the Criminal Court during all stages of a court proceeding in accordance with the purposes of Title 6 of Article 6 of the Social Services Law (SSL)
- Arranging for the provision of appropriate rehabilitative services, including but not limited to preventive services and foster care for children
- Providing directly or arranging for, either through purchase or referral, the provision of day care or homemaker services, without regard to financial criteria. Programmatic need for such service must have been established because of the investigation of a report of child abuse and/or maltreatment received by the Statewide Central Register of Child Abuse and Maltreatment (SCR) and such services must terminate as a protective service for children when the case is closed with the SCR, pursuant to the standards set forth in 18 NYCRR 432.2(c)
- Monitoring the rehabilitative services being provided by someone other than the child protective service worker
- Case management services
- Case planning services
- Casework contacts

[2] The activities listed here are paraphrased from the New York State regulatory definition of “Protective Services” found at 18 NYCRR 432.1(p)(1-15).

D. Child Protective Services organizational requirements

New York State law requires that each local department of social services (LDSS) establish a Child Protective Services unit (CPS) within the LDSS, which must operate as a single organizational unit within the LDSS [SSL §423(1)(a) and 18 NYCRR 432.2(a)(1)]. The CPS unit must be capable of investigating suspected child abuse and maltreatment and of providing protection for the child or children from further abuse or maltreatment as well as rehabilitative services for the child or children and parents or caregivers involved.

CPS is the sole public organizational entity responsible for the child protective activities that include, but are not limited to, receiving reports of abuse and maltreatment; investigating such reports, or, in certain cases, providing a family assessment response to such reports; providing, or arranging for and coordinating, the provision of rehabilitative services to families and children in indicated cases; and monitoring the services if the CPS worker is not the primary services provider for the case [18 NYCRR 432.2(b)(1)]. CPS may not assume responsibility for functions not assigned to it in Title 6 of Article 6 of the Social Services Law [SSL §423(1)(a);18 NYCRR 432.2(b)(1)].

State laws and regulations do not restrict the kind or degree of services that may be provided by CPS staff to child protective clients. CPS staff may provide or arrange for any appropriate rehabilitative services for its clients, including foster care and/or preventive services.

The CPS unit must comprise staff who are specifically designated and identifiable as the CPS [SSL §423(1); 18 NYCRR 432.2(e)(2)]. A local CPS may consist of one or more LDSS workers who perform CPS functions on a part-time basis, if that LDSS receives fewer than 200 reports of abuse and maltreatment per year, and if such workers meet all the education, experience, and training requirements. Such organizational arrangement must be approved by OCFS [18 NYCRR 432.2(e)(2)].

Each CPS must maintain a sufficient level of staff who are sufficiently qualified and trained, as specified by OCFS, to perform the above duties [SSL §423(1)(c); 18 NYCRR 432.2(e)(5)(i)]. It is preferable that CPS workers have an educational background or experience in social work or a related field and be skillful and experienced in working with children and families. State regulations require any CPS Supervisor hired after December 1, 2006, to have, at a minimum, a baccalaureate degree and two years of relevant child welfare services experience, except that these requirements may be waived by OCFS where they have created a barrier to hiring suitable staff. Non-supervisory CPS workers must have a baccalaureate degree and/or must have relevant human services experience [18 NYCRR 432.2(e)(5)(iii)].

E. Purpose of CPS

The purpose of the New York State Child Protective Services Act of 1973 is to encourage more complete reporting of child abuse and maltreatment, to provide for the swift and competent investigation of such reports, to protect children from further abuse and maltreatment, and to provide rehabilitative services [SSL §411]. The law established a CPS in each county in New York. Each CPS is required to investigate child abuse and maltreatment reports, to protect children under 18 years old from further abuse or maltreatment, and to provide rehabilitative services to children, parents, and other family members involved.

As per the Child and Family Services Plan for New York State, individuals are eligible for CPS without regard to income. Protective services for children aim to fulfill national Goal III of Title XX of the Social Security Act, as reflected in the State's Consolidated Services Plan:

"Prevent or remedy neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserve, rehabilitate or reunite families."

F. Immunity

New York State law provides immunity from civil and criminal liability for child protective institutions and for their staff so long as they are acting in good faith in the discharge of their duties and within the scope of their employment and without willful misconduct or gross negligence in carrying out those duties [SSL §419].

Acting in the discharge of one's duties as a CPS worker and within the scope of employment means that the CPS worker will have immunity for actions that are within the legal authority of the child protective provisions of the Social Services Law and OCFS regulations and within the CPS worker's job responsibilities.

Thus, immunity might not be available to a CPS staff member who intentionally fails to comply with the requirements of the law and the duties of a child protective service. Immunity from liability does not preclude the initiation of criminal or civil proceedings, but rather provides a legal defense if such proceedings are commenced. The statute establishes a presumption of good faith for actions taken by the CPS worker in the performance of child protective duties.

G. Laws, regulations, and policies

Information in this manual is based on federal and state laws and regulations, as well as on policies and best practices guidance developed by OCFS.

1. Laws

The Child Abuse Prevention and Treatment Act is a federal law that lays the foundation for all state CPS programs. The New York State Social Services Law (SSL) and the Family Court Act (FCA) address child abuse and maltreatment that occur in a familial context, foster boarding homes, and child day care programs. Some acts of child abuse or maltreatment are also crimes. Information on the crimes associated with child abuse and maltreatment can be found in the New York State Penal Law or by contacting local law enforcement or the District Attorney's office.

Title 6 of Article 6 of the SSL, which includes Sections 411-428, defines child abuse and maltreatment and describes the roles and responsibilities of OCFS and LDSSs regarding investigations or family assessment responses, outcomes, and records related to CPS.

Article 10 of the Family Court Act (FCA), specifically section 1012 of the FCA, defines child abuse, neglect, and other key terms commonly used in reports, investigations, and other child protective work. Article 10 specifies actions that the Family Court may take to protect children named in reports alleging child abuse or maltreatment.

These laws can be found at the New York State Legislature website (http://public.leginfo.state.ny.us/navigate.cgi). To find the Social Services Laws, choose the link "Laws," scroll down to the "S" section for Social Services Law, and then look for Title Six, Article Six. To find the relevant sections of the Family Court Act, choose the link "Laws," scroll to the bottom of the list where “Court Acts” are listed, and choose Family Court.

2. Regulations

Regulations that implement CPS-related laws are found in Title 18 of the New York Codes, Rules and Regulations. These regulations can be found at the New York State Department of State website for New York Codes, Rules and Regulations (https://www.dos.ny.gov/info/nycrr.html). Click “View the Unofficial NYCRR Online Here,” and then click in succession: Title 18; Chapter II Regulations of the Department of Social Services; Subchapter C. Social Services; Article 2. Family and Children’s Services; and then Part 432 Child Abuse and Maltreatment.

Part 432 has the majority of the regulations relevant to CPS. Please note, however, that some regulations that pertain to CPS are also found in other Parts of the regulations (for example, Part 429 - Family and Children’s Services Plan).

3. Policies

OCFS issues many policies each year that provide information, guidance, and/or direction to LDSSs and voluntary authorized agencies (VAs) regarding programs and responsibilities of those agencies, including CPS. These policies can be found at the OCFS website under “Policy Directives” (http://ocfs.ny.gov/main/policies/external/). Click on the applicable year of the policy (which is indicated by the first two digits in the policy number) in the list on the left side of the page.

4. Guidance based on best practices

OCFS continually monitors and assesses child protective field practice, engages in research, and elicits ideas from stakeholders and advocates in the field of child protective services. Through this ongoing work, OCFS has identified many best practices for the effective provision of CPS. While most of the information in this manual is sourced from laws, regulations, and policies, some of the guidance this manual conveys is from these identified best practices.

H. Considerations for special populations

1. Services for persons with limited English proficiency (LEP)

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating against individuals based on race, color, or national origin. This has been interpreted to require that all recipients of federal funds provide meaningful access to all services and programs provided by those recipients for persons with limited English proficiency (LEP).[3] LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

To provide meaningful access to programs and services, agencies must, where warranted, provide LEP persons involved in child protective cases with appropriate free and timely language assistance through the provision of oral interpretation and the translation of "vital documents."[4] All agencies receiving any federal funding, directly or indirectly, are mandated to comply with these requirements; this includes all LDSSs and agencies with which they contract to provide protective services. All such agencies should have language access plans to facilitate the timely provision of language assistance services when they are needed.

2. Compliance with the Indian Child Welfare Act[5]

The objective of the federal Indian Child Welfare Act (ICWA) is to protect the best interests of Native American children by supporting their cultural identity in issues pertaining to foster care, termination of parental rights, emergency removals, and adoption proceedings. The law also promotes the stability and security of Native American tribes and families by establishing minimum federal standards for the removal of Native American children from their families. The ICWA standards promote the protection of the rights of native peoples.

OCFS regulations address the requirements for implementation of ICWA in child custody proceedings, including voluntary and involuntary foster care and termination of parental rights proceedings, emergency proceedings, and the voluntary relinquishment (surrender) of parental rights involving Indian children [18 NYCRR 431.18(a)(4) and (7)(b)-(e)].

An Indian child is defined as an unmarried person who:

- Is either under the age of 18; or is between the ages of 18 and 21, is in foster care and is a student attending a school, college or university, or is regularly attending a course of vocational or technical training, or is unable to live independently; and

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[3] OCFS Division of Human Rights. "Language Access for Individuals with Limited English Proficiency," accessed at https://dhr.ny.gov/language-access

[4] "Provision of Services to Persons with Limited English Proficiency (LEP)" (16-OCFS-INF-05)

[5] "Implementing Federal and Corresponding State Indian Child Welfare Act Regulations" (17-OCFS-ADM-08)

- Is either a member of an Indian tribe/nation, or is eligible for membership, or is the biological child of a member of an Indian tribe/nation who resides on, or is domiciled[6] within the reservation of such tribe/nation [18 NYCRR 431.18(a)(1)]

In every case where the child may be removed from the home, inquiries regarding the child's status as a Native American child must be made of the family and, depending on age and capacity, the child**.** The provisions of ICWA apply to a child even if there is only reason to know that the child is an Indian child [18 NYCRR 431.18(c)]. This means that if there is reason to know that the child is American Indian or Alaska Native, all protections afforded under ICWA to a Native American child apply until it has been determined by the court that the child does not meet the definition of an Indian child [25 Code of Federal Regulations (CFR) 23.107(b)(2)].

It is necessary to determine at the outset of any court proceeding subject to ICWA whether ICWA applies to the child. This promotes stability for the Native American child and the family, and reduces the need for delays and disruptions in the placement decisions for the child. Any child believed to be an Indian child must be treated as such, unless and until it is determined that the child is not a Native American child.

In each child custody proceeding initiated by a social services official, where that official knows or has reason to know that the subject of the proceeding is an Indian child, the official must notify the child's parent or Indian custodian and each tribe/nation in which the Native American child is a member/citizen or may be eligible for membership/citizenship of the pending proceeding and of the right of the parent/Indian custodian/tribe to intervene in that proceeding. This notification must be made by registered or certified mail with return receipt requested. The official must also forward such notice by registered or certified mail with return receipt requested to the Secretary of the Interior at: Eastern Area Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, TN 37214, and to the OCFS Native American Services Special Assistant, 295 Main Street, Suite 545, Buffalo, NY 14203 [18 NYCRR 431.18(c); SSL §384-b(3)(e); FCA Articles 7, 10, and 10-c]. The *Model Notice of Child Custody Proceeding for an Indian Child* is available for this purpose as an attachment to 17-OCFS-ADM-08.

Treating the child as a Native American child from the early stages of a case prevents delays and possible changes in foster care placement to comply with the ICWA placement preferences that could result from a later application of ICWA. ICWA does not apply simply based on a child or parent's Native American ancestry. The court's decision as to whether a child is a Native American child is dependent on tribal membership/citizenship or eligibility for such membership/citizenship. The Native American tribe/nation determines whether the child is a member/citizen or eligible for membership/citizenship in the tribe/nation. This determination is solely within the jurisdiction and authority of the tribe/nation [25 CFR 23.108(b)].

In those situations, where the Native American child is either a member/citizen, or eligible for membership/citizenship in more than one tribe/nation, the tribes/nations involved must be given reasonable opportunity to agree on which one should be designated as the Native American child's tribe/nation for the purposes of the hearing. If the tribes/nations are unable to reach an

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[6] A domicile is a person's true, fixed, principal, and permanent home, even though the person may currently reside elsewhere. An Indian child's domicile is that of the Indian child's parent(s) or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the child's domicile is that of the Indian child's custodial parent [25 CFR §23.2].

agreement, the court will designate a tribe/nation after considering the factors identified in federal and OCFS regulations [25 CFR 23.109(c)(2)].

There are both federally-recognized and state-recognized tribes/nations in the United States. The federal statutory and regulatory standards limit application of ICWA only to Indian children who are members or citizens of federally recognized tribes/nations, or are eligible for membership or citizenship, and the biological child of a member or citizen of a federally recognized tribe/nation. New York State extends the application of most of the provisions of ICWA to children who are members/citizens of state-only recognized Indian tribes/nations. While the tribe/nation of which the child is a member or eligible for membership could be any of the federally or state-recognized tribes/nations in any of the 50 states, it is probable that an Indian child in New York State would be a member or citizen of a tribe/nation located within the state. [18 NYCRR 431.18(a)(2)]. There are nine tribes/nations in New York State: St. Regis Mohawk Tribe, Cayuga Nation, Seneca Nation of Indians, Tuscarora Nation, Onondaga Nation, Tonawanda Band of Senecas, Oneida Indian Nation, Shinnecock Indian Nation, and Unkechaug Nation.

Both federal and state laws allow the emergency removal of a Native American child from the custody of his or her parent(s) or Native American custodian(s), or the emergency placement of such child in a foster home or child care facility to prevent imminent physical damage or harm to the child. However, ICWA established preference provisions for both foster care and adoption placements whereby first preference is placement with a member of the child's extended family; second preference is with a member of the child's tribe/nation; and the third preference is with other Native American families [25 CFR 23.130; 18 NYCRR 431.18(g)(1)].

a. *Requirements when handling an ICWA case*

Active efforts must be made to prevent the removal of a Native American child from the home. These are defined in federal regulation as affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite a Native American child with that child's family. Active efforts differ from reasonable efforts in that reasonable efforts, for example, may include referrals for services, whereas active efforts include arranging for the most culturally appropriate services to help families overcome obstacles to engaging in those services. They include such activities as assisting the parents or Native American custodian in accessing the resources necessary to satisfy the case plan. Caseworkers must work actively to involve the child's tribe/nation, parents, and extended family in the process, employing available and culturally appropriate family preservation strategies, and facilitating the use of remedial and rehabilitative services provided by the child's tribe/nation. Active efforts must be tailored to the facts and circumstances of the individual case [25 CFR 23.2].

Caseworkers must notify the Native American child's parents, the Native American custodian(s) (where applicable), and tribe/nation of the involuntary child custody proceeding seeking foster care placement or termination of parental rights using the Notice of Child Custody Proceeding for a Native American Child. Such notification is required at both the underlying involuntary foster care proceeding as well as any subsequent termination of parental rights proceeding involving a Native American child.

Finally, caseworkers must identify a foster care or pre-adoptive placement that is appropriate within the mandates of the preference provisions set forth in statute and OCFS regulation [18 NYCRR 431.18(f)(1)].

3. Working with Immigrant Families

a. *CPS Interaction with parents/caretakers who are not documented citizens of the United States*

In New York State, a caregiver's lack of proper immigration status is neither an allegation of abuse or neglect nor a violation of the minimum degree of care. However, whenever CPS responds to a report of suspected child abuse or maltreatment, they must be alert and sensitive to the possibility that the caregiver(s) may lack proper immigration status. Indicators of a lack of proper immigration status may be identified through CPS's ongoing contact with and assessment of the family during the provision of protective, preventive or foster care services, as CPS develops a better understanding of the family's dynamics. The family does not have to reveal their immigration status nor should they feel pressured into doing so as a condition of an impartial CPS investigation.[7]

The most important source of information about a suspected lack of immigration documentation in a CPS case is the caregiver. However, the caregiver may not be ready or able to discuss the existence of an immigration issue because of the caregiver's fear of the potential consequences, such as deportation, and they may have trepidation about how CPS might act regarding the caregiver's children. One strategy for developing a more trusting relationship with a caregiver is to display concern for caregiver's well-being along with the required CPS focus on the safety of the children in the home and their level of risk of harm.

b. *Considerations for conducting a CPS investigation when parents/caretakers are not documented citizens of the United States*

CPS reports in which improper immigration status is an element in the family home require CPS to use critical thinking skills. CPS should try to recognize any biases that they may have regarding immigration and the immigrant community and set them aside. It is important to suspend judgment, try to develop as many hypotheses as possible, understand that the "simplest" solutions such as returning to their country of origin are not always the safest strategies for the caregivers or the children, and try to view the situation from the point of view of the family members. It is important that CPS recognize the limitations of their knowledge and draw upon available resources, as needed, such as a supervisor, an immigration advocate, materials from the New York State Office for New Americans or some other community resource.

c. *Cultural considerations*

It is not uncommon for caregivers who are not documented citizens of the United States, to have their legal status used against them. Members of these communities may be distrustful of state agencies and law enforcement officials for many reasons, one of which may be related to negative experiences with government agencies in their countries of origin. CPS

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7 18-OCFS-LCM-15 Protocols for Signing Forms for Non-Immigrant Clients Applying for U Visas and T Visas

should take into consideration the probability of past negative experiences when working with caregivers or other family members who are not documented citizens.

Lack of proper immigration status may affect the caregiver's ability to parent and protect the child or children in the home. Consequently, CPS may need to use intervention strategies for families dealing with immigration issues that are different from the intervention strategies used in cases where immigration status is not a factor. This includes preparing a safety plan which considers the cultural expectations and realities that a family may be experiencing. All plans should be tailored to fit the specific needs of the family while promoting a safe environment for the child(ren). The safety plan is vital in preventing the unnecessary placement of children into foster care if their parents or caretakers are detained by Immigration Customs Enforcement or deported to their countries of origin.

Each family's safety plan will have slight variations to fit the family's specific needs. However, OCFS recommends the following items be included in the preparation of the safety plan:

- Contact information for the appointed guardian who will be responsible for the children and what kind of custody agreement the caretakers would like to pursue. The agreement should include a clause of activation—when/what will trigger the custody agreement.

  The type of agreement (legal vs informal) will be determined by what is best for the children and the family. All options including benefits and potential risks, particularly those with possible negative immigration consequences must be thoroughly discussed with the caregivers.

  We recommend using OCFS-4940 Designation of Person in Parental Relationship form that can be found using the following link https://ocfs.ny.gov/main/Forms/kinship/OCFS-4940.docx
- Child(ren)'s medical records including allergies and medications
- Child(ren)'s birth certificates
- Child(ren)'s school contact information—be sure to encourage parents to update their emergency contact information allowing the school to be aware of who is and isn't allowed to pick up their child(ren)
- Plan of action (what to do/who to call) depending on when a parent/guardian is missing or may be detained and unable to communicate
- Contact information in country of origin in case the parent/guardian is deported
- Contact information for a lawyer—New York State Liberty Defense Project provides pro bono immigration attorneys to all New Yorkers who are in detainment/deportation proceedings
- Information of the parent/guardian's consulate—only if the person agrees to notify the consulate or receive their help
- U.S. citizen children should have a valid passport and their birth should be registered with their parent's country of origin consulate which facilitates their exit from the United States and entry into their parent's home country in the case that reunification in the caretaker's country of origin is the desired arrangement
- Non U.S. citizen children should have a valid passport from their country of origin
- A copy of the parent/guardian's identification

d. *CPS determination decisions in relation to families who are not documented citizens of the United States*

The investigation of a report of suspected abuse or maltreatment involving a family who are not documented citizens of the United States must be conducted using the same standards and legal definitions as any other report of suspected child abuse and maltreatment.

e. *Coordination in cases with families who are not documented citizens of the United States*

Law enforcement

Per *17-OCFS-ADM-06*, "LDSSs and VAs must not deny appropriate service(s) to a child, for which the child is otherwise eligible, regardless of the residency status of the child's parent(s) or custodial relative(s). LDSSs and VAs must not report to immigration enforcement personnel in instances where: undocumented children and families receiving information and referral services, child protective services or foster care services, and the undocumented parent(s) or custodial relative(s) of a child receiving social services who is lawfully residing in the United States or a citizen of the United States."

Community resources

To best serve our immigrant families, CPS should develop working relationships with the community's immigration organizations. The New York State Office for New Americans serves as the lead state agency for foreign born New Yorkers. They have several opportunity centers throughout the state with resources available for immigrant families that include but are not limited to language and citizenship classes, financial literacy programs, as well as legal assistance. CPS workers are encouraged to reach out to the New York State Office for New Americans in order to better serve New York's immigrant families.

Chapter 2: **Reporters**

A. Mandated reporters A-1

1. Professions classified as mandated reporters A-1
2. Reporting requirement applicable to social services workers only A-2
3. Reporting procedures A-3
   - *a. Oral reports A-3*
   - *b. Written reports A-3*
   - *c. Reports that must be made to the Justice Center A-4*
4. Provision of records by mandated reporters A-5
5. Photographs and x-rays A-5
6. Reporting procedures for institutions with multiple mandated reporters A-5
7. Mandated reporter access to results of the investigation A-7
8. Failure to report A-7

B. Immunity provisions for reporters B-1

C. OCFS Model Policy on Reporting Educational Neglect C-1

D. Protective custody by certain mandated reporters D-1

1. Procedures for removals D-1
2. Persons in charge of hospitals D-2
3. Other medical personnel D-2
4. Immunity pertaining to protective custody D-2

Chapter 2: **Reporters**

A. Mandated reporters

Mandated reporters are those individuals who are required by law to report suspected child abuse or maltreatment to the Statewide Central Register of Child Abuse and Maltreatment (SCR), operated by the New York State Office of Children and Family Services (OCFS) [SSL §413].

Mandated reporters are mandated to make a report, or cause a report to be made, when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is abused or maltreated, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or person legally responsible for the child comes before them in their professional or official capacity and states from personal knowledge facts, conditions, or circumstances which, if correct, would render the child an abused or maltreated child.

Note: There is an exception for the standard under which mandated reporters are required to report that is applicable only to social services workers. See **Section A,** *Mandated Reporters*.

1. Professions classified as mandated reporters

The following persons are mandated to report or cause a report to be made when they have reasonable cause to suspect that a child coming before them in their professional capacity is an abused or maltreated child [SSL §413(1)(a)]:

- Any physician
- Registered physician assistant
- Surgeon
- Medical examiner
- Coroner
- Dentist
- Dental hygienist
- Osteopath
- Optometrist
- Chiropractor
- Podiatrist
- Resident
- Intern
- Psychologist
- Registered nurse
- Social worker
- Emergency medical technician
- Licensed creative arts therapist
- Licensed marriage and family therapist
- Licensed mental health counselor
- Licensed psychoanalyst
- Licensed behavior analyst
- Certified behavior analyst assistant
- Hospital personnel engaged in the admission, examination, care or treatment of persons
- A Christian Science practitioner
- School official, which includes, but is not limited to, any school administrator, teacher, psychologist, social worker, nurse, guidance counselor, or other school personnel required to hold a teaching or administrative license or certificate
- Full- or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate

- Social services worker (See **Section A.2,** *Reporting requirement applicable to social services workers only* of this chapter for special requirements applicable to social services workers only)
- Employee of a publicly funded emergency shelter for families with children[1]
- Director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in Section 1392 of the Public Health Law
- Day care center worker
- School-age child care worker
- Provider of family or group family day care
- Employee or volunteer in a residential care facility for children that is licensed, certified or operated by OCFS
- Mental health professional
- Substance abuse counselor
- Alcoholism counselor
- All persons credentialed by the Office of Alcoholism and Substance Abuse Services
- Peace officer
- Police officer
- District attorney or assistant district attorney
- Investigator employed in the office of a district attorney
- Other law enforcement official

2. Reporting requirement applicable to social services workers only

Social services workers *only* are additionally required to report or cause a report to be made when *any person* comes before them in their professional or official capacity with information from personal knowledge that causes them to have reasonable cause to suspect that a child is an abused or maltreated child [SSL §413(1)(d)]. All other mandated reporters are required to report or cause a report to be made only when confronted with a child whom they suspect to be abused or maltreated or when a parent, guardian, custodian or other person legally responsible for a child provides information which, if true, would mean that child was abused or maltreated [SSL §413(1)(a)]. Further, any person is permitted to report any reasonable suspicion of abuse or maltreatment no matter how that information is brought to their attention [SSL §414], and OCFS encourages such reporting.

OCFS has determined that the term “social services worker” applies to the following categories of persons:

- Professional and paraprofessional staff of local departments of social services (LDSSs). This includes not only child welfare staff but all professional and paraprofessional LDSS staff, regardless of their function or area of responsibility, who provide services to children and/or families.
- Professional and paraprofessional staff who provide services to children and/or families and who work for organizations or entities that have contracts with LDSSs to provide services related to foster care, adoption, or preventive services. It would also apply to

[1] Note: This includes domestic violence shelters.

individuals who have contracts or subcontracts with the LDSS to supply professional or paraprofessional services related to foster care, adoption, or preventive services.

- OCFS Regional Office staff who have responsibilities for inspections or investigation of complaints at residential facilities and day care programs, other than those staff whose sole responsibility is to inspect facilities and investigate complaints related to physical plant or building safety issues.

For the purpose of this definition of "social services worker," paraprofessionals are trained aides who provide support and assistance to professionals in carrying out the professional functions of the professional person.[2]

3. Reporting procedures

a. *Oral reports*

The law requires mandated reporters to immediately report suspected child abuse or maltreatment to the SCR by telephone, or by fax on an LDSS-2221A (rev. 09/2016) form [SSL §415]. A mandated reporter submitting a report via fax must have a prior agreement with the SCR to do so.

The SCR accepts reports of suspected child abuse or maltreatment perpetrated by a parent or other person legally responsible for a child, including a child day care program staff person or a foster parent.

SCR Mandated Reporter Hotline: 1-800-635-1522

In addition to those persons required to report as mandated reporters, any other person may make a report if he/she has reasonable cause to suspect child abuse or maltreatment [SSL §414]. Those persons who are not mandated reporters must use the toll free number below.

SCR Public Hotline: 1-800-342-3720

b. *Written reports*

Within 48 hours of making an oral report, the mandated reporter must provide a signed, written report to the local child protective service (CPS) on OCFS Form LDSS-2221A_ (rev 09/2016). The form is available in the English, Spanish, Italian, Haitian Creole, Russian, Korean, and Chinese languages.

Written reports must include the names and addresses of the child and his or her parents or other person legally responsible for his or her care, if known, and, as the case may be [SSL §415]:

- The child's age, sex and, race
- The name of the person(s) alleged to be responsible for causing the injury, abuse or maltreatment, if known
- Family composition, where appropriate
- The source of the report
- The person making the report and where he/she can be reached
- The reasons for suspicion, including the nature and extent of the child's injuries, abuse or maltreatment, past or present, as well as any injuries, abuse or

[2] OCFS. (2007). "*Xctasy's Law: Chapter 513 of the Laws of 2007*" (07-OCFS-ADM-15).

maltreatment of the child's siblings, and any evidence or suspicions of "parental" behavior contributing to the problem

- The actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child, or notifying the medical examiner or coroner
- Any other information that the person making the report believes might be helpful

Where the mandated reporter works in an organization with more than one mandated reporter, the person in charge or that person's designee may provide any additional written reports needed. (See **Section 6**, *Reporting procedures for institutions with multiple mandated reporters*.)

c. *Reports that must be made to the Justice Center*

Reports of suspected abuse or neglect of a child or adult vulnerable person by a staff person, consultant, contractor or volunteer in a facility or program operated, licensed or certified by the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), or the Office of Alcoholism and Substance Abuse Services (OASAS) must be made to the **Vulnerable Persons' Central Register (VPCR)**, operated by the New York State Justice Center for the Protection of People with Special Needs (Justice Center). Other programs where reports must be made to the VPCR rather than to the SCR include camps for children with developmental disabilities, as defined in regulations of the Department of Health, and certain schools for the blind, for the deaf, for students with disabilities, or that have been approved by the commissioner for education for special education services or programs. [See SSL § 488(4): SSL §491(4).]

Vulnerable Persons' Central Register
(VPCR) Hotline Number: **1-855-373-2122**

Reports must also be made to the VPCR, not to the SCR, regarding the suspected abuse or neglect of children in any program or facility operated by OCFS for juvenile delinquents or juvenile offenders placed in OCFS's custody or children who are being cared for in residential programs certified, licensed, or operated by OCFS. This includes runaway and homeless youth programs, Close to Home programs, congregate foster care programs operated by voluntary agencies, and youth detention programs. It does not include foster boarding homes; reports of alleged abuse and maltreatment in foster boarding homes are made to the SCR. The VPCR also receives reports of suspected abuse or neglect of adults residing in Family Type Homes for Adults [SSL § 488(4)(b)]. Information about the Justice Center is available on its website at: https://www.justicecenter.ny.gov/.

Mandated reporters in programs that are supervised, operated, or funded by OCFS are advised that, when they are aware of an assault, criminally abusive behavior, or another possible crime against a child, they should report that information to the police. In some instances, they may be required to do so by law or regulation. If a mandated reporter observes an emergency, the first call should always be to 911.

4. Provision of records by mandated reporters

Mandated reporters who make a report that results in an investigation of an allegation of child abuse or maltreatment are required to comply with all requests for records made by a CPS relating to the report. This includes information that may be covered by one of the privileges set forth in Article 45 of the New York State Civil Practice Laws and Rules (e.g., the physician-patient privilege, the psychologist-patient privilege, the social worker-client privilege) and any other law to the contrary [SSL §415]. The records available to CPS include records relating to diagnosis, prognosis, or treatment, and the clinical records of any patient or client that are essential for a full investigation of allegations of child abuse or maltreatment. Disclosure of substance abuse treatment records, however, can only be made pursuant to the standards and procedures for disclosure of such records delineated in federal law.

Written reports from mandated reporters are admissible in evidence in any proceedings relating to child abuse or maltreatment. In addition, federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations [45 CFR 160.203(c)] state that HIPAA privacy rules do not apply to reporting of child abuse. The U.S. Department of Health and Human Services has provided exceptions to make it clear that health care providers suspecting child abuse or maltreatment must report it and provide CPS investigators with relevant information in accordance with state law.

The mandated reporter, as the owner of the records, decides in the first instance if the records sought by CPS are essential to the CPS investigation. If CPS seeks to obtain records from a mandated reporter who is unwilling to provide the records sought, CPS should clearly explain how the records are pertinent to the investigation. If the mandated reporter still refuses, CPS can provide an appropriate authorization or release, or obtain a court order requiring production of the records.

5. Photographs and x-rays

Mandated reporters may take or cause to be taken at public expense photographs of the areas of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Any photographs or x-rays taken shall be sent to the CPS along with the written report, or as soon thereafter as possible. Any mandated reporter who is on the staff of an institution, school, facility, or agency must immediately notify the designated person in charge and that person must take or arrange to be taken, at public expense, color photographs of visible trauma and must, if medically indicated, arrange for x-rays to be taken [SSL §416].

The LDSS is authorized to reimburse any mandated reporter or official for the cost of any such photographs or x-rays.

6. Reporting procedures for institutions with multiple mandated reporters

Whenever a mandated reporter is required to report in his/her capacity as a staff member of a medical or other public or private institution, school, facility or agency, the reporter must make the report as required and immediately notify the person in charge of the institution or agency or that person's designee. That person in charge, or that person's designee, is then responsible for all subsequent administration necessitated by the report. Any report made shall include the

name, title and contact information for every staff person of the institution who is believed to have direct knowledge of the allegations in the report [SSL §413(1)(b)].

The mandated reporter law is not intended to require more than one report from any institution, school, facility or agency on any one incident of suspected child abuse or maltreatment [SSL §413(1)(b)].

No institution, school, facility or agency is permitted to take any retaliatory personnel action against an employee who made a report to the SCR. In addition, no school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider is permitted to impose any conditions, including prior approval or prior notification, upon a member of its staff mandated to report suspected child abuse or maltreatment [SSL 413(1)(c)].

An organization such as a school or hospital should designate one or more individuals to be liaisons between the organization and the SCR and/or CPS, and to be responsible for all subsequent administration necessitated by the report. This may include providing follow-up information (e.g., relevant information contained in the child's educational record) to CPS, and also includes completing Form LDSS-2221A (Rev. 09/2016), which requires listing the names, titles, and contact information of all staff of the institution, school, facility, or agency who are believed to have knowledge of the allegations contained in the report. It is important, however, to note that a mandated reporter who has the direct knowledge of the facts that created a reasonable cause to suspect abuse or maltreatment has the legal obligation to *personally* make a report to the SCR. A mandated reporter may not inform the organization's leader and/or liaison of the concern with the intent that that person will make the call. Similarly, an institution, agency, or school may not create any policy or procedure that establishes such a practice.

The requirement that every mandated reporter who has direct knowledge personally make a report to the SCR could potentially result in situations in which multiple reports are made. For example, there may be many people on a hospital staff who encounter a single child whom they have reasonable cause to suspect has been abused by a parent.

OCFS has provided guidance specifying how mandated reporters and organizations may fulfill their responsibility to report in situations in which there are multiple mandated reporters with direct knowledge of the situation.[3] This guidance can serve to both facilitate the communication to the SCR of all pertinent information and relieve the burden for every mandated reporter with direct knowledge of the situation to call in separate reports. The following summarizes the elements suggested in the guidance:

- Organizations are encouraged to establish a policy that complies with the statute, but the policy must require that at least one mandated reporter with direct knowledge causing suspicion of abuse or maltreatment makes a report to the SCR.
- Once one report has been made, other mandated reporters in the same organization who have knowledge that such a report was made and accepted by the SCR are not required to make additional reports. A mandated reporter who has made a report to the SCR may advise other mandated reporters that a call was made to the SCR and may state whether the report was accepted or not.

[3] OCFS. (2008). "Mandated Reporters: Chapter 193 of the Laws of 2007" (08-OCFS-INF-01).

- If a mandated reporter who believes that he or she has reasonable cause to suspect abuse or maltreatment is told by another mandated reporter that a report was not accepted by the SCR, and the mandated reporter believes that he or she has additional information not known to the mandated reporter who previously contacted the SCR, the mandated reporter is required to make a report to the SCR and advise the SCR of the additional information.
- The mandated reporter who called in a report, as well as all other mandated reporters who have direct knowledge that causes them to reasonably suspect abuse or maltreatment, must each notify the person in charge or that person's designee regarding the information that they have about the alleged abuse or maltreatment.

7. Mandated reporter access to results of the investigation

A person or official who is required to make a report of suspected child abuse or maltreatment shall receive, upon request, the findings of a CPS investigation resulting from that person's report. No information may be released, however, unless the person or official's identity is confirmed. If the request for information is made prior to the completion of an investigation of a report, the released information shall be limited to the statement that the report is "under investigation." If the request for information is made after the investigation is complete, the released information shall be limited to whether the report is "indicated" or "unfounded," whichever the case may be [SSL §422(4)(A)].

A mandated reporter may register his or her desire to be informed of the findings of an investigation on the form LDSS-2221A (Rev. 09/2016) or may submit a request to CPS at any time.

When a report has been assigned to a family assessment response (FAR), there is no determination of "indicated" or "unfounded." A mandated reporter who asks for the findings regarding the report will receive the information that the report has been assigned to a Family Assessment Response, regardless of whether the case is closed or still in progress. A CPS worker can access letters in CONNECTIONS to use for the purpose of responding to a mandated reporters request, both for investigations and FAR.

8. Failure to report

A mandated reporter's willful failure to report suspected child abuse or maltreatment is a Class A misdemeanor (punishable by up to a year in jail and/or a fine of up to $1,000) and the mandated reporter can also be held civilly liable for the damages proximately caused by the failure to report [SSL 420]. When a commissioner of social services in a LDSS has reasonable cause to suspect that a mandated reporter has willfully failed to report a case of suspected child abuse or maltreatment, the commissioner must inform the district attorney of the suspected failure [18 NYCRR 432.8].

B. Immunity provisions for reporters

All mandated reporters who have reported suspected child abuse or maltreatment are presumed to have done so in good faith if they made the report during the discharge of their duties and within the scope of their employment. Mandated reporters who report, take photographs, take protective custody of a child, or disclose CPS information in compliance with the Social Services Law are immune from both civil and criminal liability for actions taken in good faith [SSL §419]. This immunity does not prevent civil or criminal proceedings from being filed, but presumed good faith provides a defense against libel, slander, invasion of privacy, false arrest and other types of law suits that might be filed by persons who feel that their rights were violated, provided that the person was acting without willful misconduct or gross negligence [SSL §419; FCA §1024(c)]. See **Chapter 1, Section F,** *Immunity.*

C. OCFS Model Policy on Reporting Educational Neglect

The SSL includes a requirement that the Commissioner of OCFS, in conjunction with the Commissioner of the New York State Department of Education, develop model practices and procedures for LDSSs and school districts regarding the reporting and investigation of educational neglect [SSL §34-a(8)]. The OCFS Model Policy on Educational Neglect is at:

http://ocfs.ny.gov/main/documents/press/NYS_OCFS_PRESS_022808_Model_policy_educational_neglect.pdf

D. Protective custody by certain mandated reporters

A limited number of mandated reporters are authorized to take a child into protective custody in order to protect the child from imminent danger to the child's life or health. The law requires these individuals to take all appropriate measures to protect a child's life and health including, when appropriate, taking or keeping a child in protective custody without the consent of the parent or guardian if such person has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his or her residence or in the care and custody of the parent, guardian, custodian, or other person legally responsible for the child's care presents an imminent danger to the child's life or health [SSL §417(1)(a); FCA §1024(a)].

The persons holding this right and responsibility are:

- Peace officers, acting pursuant to their special duties
- Police officers
- Law enforcement officials
- Designated employees of a city or county department of social services
- Agents or employees of an Indian tribe that is authorized to provide CPS
- Persons in charge of a hospital or similar institution

Although not authorized to take a child into protective custody, a physician treating a child whom the physician believes is in imminent danger must notify the LDSS or the appropriate police authorities to take custody of the child [SSL §417(1)(b); FCA §1024(a)].

1. Procedures for removals

Anyone removing a child shall:

1. Bring the child immediately to a place approved for such purpose by the LDSS, unless the person is a physician and the child is or will be admitted to a hospital;
2. Make every reasonable effort to inform the parent where the child was taken;
3. Coincident with removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the Family Court for the return of the child and of the right to be represented by counsel and procedures of obtaining counsel, if indigent. OCA Form 10-1a, Notice of Temporary Removal of Child and Right to Hearing, should be used for this purpose. See **Chapter 12,** *Notifications*; and
4. Inform the court and make a report to the SCR as soon as possible [FCA §1024(b)].
5. If a person in charge of a hospital or similar institution has taken the child into protective custody, that person must immediately notify the appropriate CPS, which shall immediately commence an investigation. CPS must begin a child protective proceeding in the family court at the next regular weekday session or recommend to the court at that time that the child be returned to his or her parents or guardian [SSL §417(2); see PHL §2801(1) for the definition of a "hospital"]. See **Chapter 6, Section G.4,** *Medical examinations and evaluations*. Also, see **Chapter 9***, Family Court Proceedings (Article10)*, and **Chapter 6, Section D**, *Investigation/Assessment*.

2. Persons in charge of hospitals

The law provides special rights and responsibilities for the doctors or other persons in charge of a hospital or similar institution regarding temporary custody of children suspected of being abused or maltreated. A "hospital or similar institution" is defined in Public Health Law §2801(1).

Where the hospital administrator has reasonable cause to believe that the circumstances and conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child, is presenting imminent danger to the child's life and health, he or she must take all measures necessary to protect the child, including, where appropriate, taking and retaining custody of the child. SSL §417(2) states that, where appropriate, the person in charge of a hospital may retain custody of an abused or maltreated child until the next regular week day session of the family court, at which time CPS can file an Article 10 petition or recommend to the court that the child be returned to his or her parents or guardian. Hospital administrators cannot retain children indefinitely.

A hospital may keep custody of the child whether or not additional medical treatment is required and whether or not a parent or guardian has asked for the return of the child. Whenever the person in charge of a hospital makes the decision to retain a child in protective custody, the person in charge of the hospital who has retained the child must make a call to the SCR and advise CPS immediately. The report should state that the hospital is taking protective custody and the reasons for that action. In all cases, CPS must immediately commence a CPS investigation. If during this stage of the investigation, the child no longer needs hospital care, CPS must take all necessary steps to protect the child. Where appropriate, this can include taking a child into protective custody. If the LDSS receives custody in this way, the parent or other persons responsible for the child's care must be notified immediately, as must the family court. See **Chapter 12,** *Notifications*.

CPS is then obliged to commence a child protective proceeding (i.e., file a petition) in Family Court at the next regular weekday session or, if appropriate, CPS may recommend to the court that the child be returned home [SSL §417(2)]. See **Chapter 9**.**J**, *Family Court Proceedings (Article 10).*

3. Other medical personnel

A physician outside of a hospital setting may not take a child into protective custody. However, any physician treating a child is required to notify the appropriate police authorities or CPS to take protective custody of that child if the physician has reasonable cause to believe that the circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or other person responsible for the child's care presents an imminent danger to the child's life or health. When the physician notifies CPS pursuant to this provision, CPS must evaluate the child's circumstances or conditions and make a determination regarding appropriate action at that time [SSL 417(1)(b); FCA 1024(d) and (e)].

4. Immunity pertaining to protective custody

Any person or institution acting in good faith in the removal or keeping of a child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or keeping [FCA §1024(c); SSL §419].

Chapter 3: **Statewide Central Register responsibilities**

A. Intake A-1

1. Overview A-1
2. Elements required to register a report A-2
3. Receiving and registering reports A-3
4. Report construction A-4
5. Sensitive reports A-6
6. Quality assurance A-6
7. Withdrawal of reports A-6
   a. *Reasons for withdrawal of a report* A-7
   b. *Procedure for withdrawing or rejecting reports* A-7
8. Joint jurisdictional assignment A-7
9. Changing jurisdictional responsibilities after intake A-10

B. Responses to calls not qualifying as reports B-1

1. Law Enforcement Referrals (LERs) B-1
2. Reports regarding youth in OCFS residential care B-1
3. Information referrals B-1
4. Complaints about teachers B-2

C. SCR Service Center operations C-1

1. Overview C-1
2. SCR Database Checks C-1
3. Administrative appeal C-2
   a. *Administrative reviews* C-3
   b. *Fair hearings* C-5
   c. *LDSS documentation at administrative review or fair hearing.* C-6
4. Early expungement of unfounded reports C-7
5. Expungement of reports due to passage of time. C-8
6. Requests for information C-8
7. Confidentiality regarding SCR Service Center inquiries C-8

Chapter 3: **Statewide Central Register Responsibilities**

The primary purpose of this manual is to provide local departments of social services (LDSSs) with comprehensive guidelines regarding their child protective responsibilities. However, CPS Caseworkers and other LDSS staff may find it helpful to have an overview of the standards and procedures used by the Statewide Central Register of Child Abuse and Maltreatment (SCR).

SCR responsibilities fall into two major categories:

- Receiving and registering reports alleging child abuse and/or maltreatment
- Operating the SCR Service Center

A. Intake

1. Overview

The Child Protective Services Act of 1973 established the SCR as the primary recipient of calls regarding suspected abuse and maltreatment of children in New York State. Trained Child Protective Specialists at the SCR receive calls through the toll-free telephone lines 24 hours a day, 7 days a week, 365 days a year [Social Services Law (SSL) §422(2)(a)].

Calls to the SCR come through the:

- Mandated Reporter Line (1-800-635-1522)
- Public Line (1-800-342-3720)
- Mandated Reporter Fax Line (1-800-635-1554)[1]
- Hearing Impaired TTY Line (1-800-638-5163)[2]

The SCR is equipped to receive calls from those who are Limited English Proficient (LEP) on either the public or mandated reporter line by use of a telephone language interpretation service.

The SCR strives to answer incoming calls expediently. The Specialist conducts a focused interview with the caller and uses that information to determine if a report of suspected abuse or maltreatment can be registered, or if other action is necessary and appropriate, such as a Law Enforcement Referral (LER). The interview process begins as a dialogue with the caller about his or her concerns for the child. The Specialist obtains as much relevant information as possible, focusing on the basis for the caller's suspicion that the child is being abused or maltreated. The Specialist must also acquire from the caller key demographic information, including information sufficient to locate the child. Using the information obtained during the interview, the Specialist makes an informed decision as to whether the allegations provided by the caller meet the requirements for registering (i.e., accepting) a report of suspected abuse or maltreatment. If the

[1] Certain entities have prior agreements with the SCR permitting them to submit initial reports by fax. Those who do not have such a prior agreement are not authorized to submit reports by fax.

[2] TTY (text telephone) is a special device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening. A TTY is required at both ends of the conversation.

information provided by the caller could reasonably constitute a report of abuse or maltreatment, the SCR is obligated to register a report [SSL §422(2)(a)].

Calls to the SCR are recorded for quality assurance and training purposes. The recording does not affect the caller's right to have his or her identity remain confidential.

Mandated reporters and Form LDSS-2221-A

Mandated reporters (see **Chapter 2**, *Reporters)* are required to complete Form LDSS-2221-A, "Report of Suspected Child Abuse or Maltreatment," within 48 hours of making a report and submit it to the CPS in the LDSS where the child named in the report resides. The SCR Specialist will provide a mandated reporter with the correct LDSS address.

Entities that have received prior approval from the SCR to submit reports alleging child abuse or maltreatment by fax must use the LDSS-2221-A form to submit their reports.

Form LDSS 2221-A is available on the OCFS internet at http://ocfs.ny.gov/main/documents/docs.asp?document_type=1&category_number=5

and on the OCFS intranet at http://ocfs.state.nyenet/admin/forms/SCR

To order a supply of forms, download and complete Form OCFS 4627, "Request for Forms and Publications," from the site above and send it to:

Office of Children and Family Services
Forms and Publications Unit, Room 134 North
52 Washington St.
Rensselaer, NY 12144-2834

If you are unable to access Form LDSS-2221-A on the OCFS website, call the Forms Order Line at 518-473-0971. Leave a detailed message including your name, telephone number, complete address, the form number (i.e., LDSS-2221-A) and the number of forms you are requesting.

2. Elements required to register a report

For the SCR to register a report alleging child abuse or maltreatment, it must receive information that meets the criteria for such a report to be registered [SSL §422(2)(a)]. These criteria are:

- The allegations made by the caller, if true, must constitute child abuse or child maltreatment, as defined in New York State Social Services Law Section 412(1) and (2), which incorporate the definitions of "abused child" and "neglected child" in Family Court Act (FCA) Section 1012(e) and (f); and
- The person alleged to have abused or maltreated a child must be a person who can be a "subject of the report." The term "subject of the report" is defined in Section 412(4) of the SSL and includes the following:
  - The child's parent; or
  - The child's guardian; or

- Any other person legally responsible (PLR) for the child's care. A PLR is defined as: a child's custodian, guardian, any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child [FCA §1012(g)]; or
- A director or operator of, or an employee or volunteer in, a home operated or supervised by an authorized agency or OCFS (i.e., a foster boarding home); or
- A director, operator, employee, or volunteer in a family day care home, group family day care home, day care center, or school-age child care program; and
- There must be jurisdiction in New York and sufficient demographic information to locate the subject or child so CPS may initiate an investigation. There is jurisdiction when:
  - The alleged incident occurred in New York;
  - The incident occurred outside New York, but the child named in the report is presently in New York and needs protection from abuse/maltreatment.

When all of these elements are present (i.e., the allegations constitute abuse or maltreatment; the person allegedly responsible can be a subject of a report; and there is jurisdiction), the SCR will register a report and immediately transmit the report to the appropriate LDSS CPS for investigation.

3. Receiving and registering reports

The specialist registers a new report by entering the information obtained from the caller (allegations, household composition, description of the incident, etc.) into CONNX. When such information is provided, the specialist also enters the caller's name, address, telephone number and alternate contact information so that CPS can contact the source to confirm or clarify the information in the report.

The SCR never requires the caller's contact information as a condition of registering a report. The specialist also explains that the caller's identity will not be revealed to the subject(s) or other persons named in the report, unless the caller consents, in writing, to the disclosure of his/her identity [SSL §422(4)(A)].

Certain individuals, including some professionals with certifications or licenses issued by New York State, are mandated reporters of child abuse and maltreatment [SSL §413(1)(a)] (see **Chapter 2,** *Reporters)*. Mandated reporters are required to submit LDSS Form 2221-A to the CPS of the county where the child resides within 48 hours of the SCR registering the report [SSL §415].

After the specialist enters the report in CONNX, he or she conducts a person search of the CONNX database to determine if any of the people named in the report are known in an open case or a closed CPS investigation. If a match is found, the specialist then relates any known person to their existing person IDs in CONNX. This process informs the LDSS of an individual's CPS history, including both indicated and unfounded reports. The specialist also determines whether a report is classified as Initial, Subsequent, or Duplicate, based on the CONNX history.

If CONNX reveals there is an open CPS investigation, the specialist determines whether the new report should be combined with the open investigation. Combining reports is only allowed when the criteria for a Duplicate report, a Subsequent report, or an Additional Information report have been met (See **Chapter 4**, Special Circumstances *Report Processing*).

The CONNX system automatically assigns a unique SCR Call ID number to the report, which confirms that the report has been registered. The specialist then assigns jurisdiction and immediately transmits the report electronically via CONNX to the appropriate CPS unit. If there is an existing record, this information accompanies the electronic transmittal of the new report.

All reports are transmitted electronically using the CONNX system unless CONNX isn't available.[3] If the CONNX system is not available, the specialist uses the Business Continuity Application (BCA) to register a report. The BCA is a secure system that can process, fax, and track reports. BCA assigns the report a temporary ID number and then the specialist either faxes or verbally transmits the report to the appropriate LDSS. OCFS maintains agreements with each county to determine who will receive such reports via fax or telephone.

Once CONNX is available, the BCA report is automatically uploaded to CONNX and a specialist proceeds with the search for any previous SCR history of persons named in the report and relates the information found into the corresponding report in CONNX.

4. Report construction

The specialist must document the following information in the Narrative section in a clear and concise manner:

- **Who** is the parent, PLR or other subject who allegedly abused/maltreated the child? Who is the child who was harmed or placed at imminent risk of harm?
- **What** happened that caused harm or an imminent risk of harm to the child(ren)? What were the circumstances surrounding the incident(s)? What were the injuries and/or harm to the child or risk of injury or harm?
- **When** did the alleged abuse/maltreatment occur? If past incidents are relevant, the report narrative should contain that information. Any dates or times of past incidents provided by the caller must be included.
- **Where** did the alleged abuse/maltreatment occur?
- **How** did the incident(s) happen and what was the harm or risk of harm to the children?

When the subject is not a parent, the first lines of the narrative should explain why this individual is considered to be legally responsible for the allegedly abused/maltreated child(ren) or why the person is a legitimate subject of a report. (For example, "Subject is mother's boyfriend and lives in the home"; "Subject is the child's foster parent"; or "Subject is a worker at the day care center which the child attends".)

Adults and children in the narrative should be referred to by name. Age should be used as the identifier only when names are unknown (e.g., "5-year-old child").

[3] "After-Hours Transmission Procedure for Reports of Suspected Child Abuse and Maltreatment Registered by the New York Statewide Central Register of Child Abuse and Maltreatment" (17-OCFS-LCM-02)

The narrative should be written in the third person and should not include any reference to the source of the report. It should not include information that might suggest the identity of the source of the report or reference anyone who provided information that caused the call to be made.

The Miscellaneous Information (Misc. Info) section of the SCR intake report includes information that may not directly relate to the allegations of abuse or maltreatment, but may provide other important information for the CPS caseworker. This section should be used to provide information such as:

- The existence of a Law Enforcement Referral (LER) in addition to the report
- Quotes from persons listed in the report
- Names of people and other pertinent information that may be helpful to the investigation but are not included in the narrative
- Information about LEP needs of the child or family, or the need for language services
- Detailed directions to the home if the exact address is not known
- The address where the child is located, if different from the case address, such as when the child is at another location for protection
- Duplicate Person Identification Numbers, if applicable
- A New York State license plate number, when needed for identification, and any information obtained from an SCR check of the Department of Motor Vehicles database
- Any other information that might be helpful to the CPS worker

Writing an SCR intake report narrative

- Do not include any information in the narrative that identifies the source of the report.

  INCORRECT: "Mary stated that her father punched her in the face, causing a laceration."

  CORRECT: "The father punched Mary in the face, causing a laceration."

- When using adjectives in the narrative, provide information to clarify their meaning.

  UNCLEAR: "The home is dirty."

  CLEAR: "There is rotten food all over the floor."

- Make a note if the source of the report is unable to provide pertinent information.

  EXAMPLE: "It is unknown whether the mother is aware of the abuse."

- Spell out all words; don't use abbreviations.

5. Sensitive reports

A report may involve a person or circumstance that creates interest from persons who are authorized to use CONNX but are not involved in the case. In such situations, the confidentiality of the records and the privacy of the persons named within the record can be given additional safe-guards by designating the case record as "sensitive" in CONNX.[4]

The designation of "sensitive" can be applied to a report by the SCR if the specialist is aware that the report meets the criteria. However, CPS may also determine a case meets the criteria for designation as a sensitive case and may so designate the case in CONNX. When a case is designated as sensitive, CONNX automatically limits access to the case.

The SCR or the LDSS should consider designating a case as sensitive when:

- A SCR or LDSS employee is named in the report, OR
- A high-profile person from the community is named in the report, OR
- The report involves a case that has garnered significant media coverage.

If a person named in a sensitive case is employed by CPS or is in a management position within the LDSS, it may be appropriate to work another LDSS to assign the report to a different LDSS CPS unit to maintain the integrity of the investigation and confidentiality of the records. Many LDSSs have developed formal or informal reciprocal agreements with neighboring counties that provide protocols for handling such reports. See **Chapter 4**, *Special Circumstances in Report Processing* for more information on Sensitive Reports.

6. Quality assurance

The SCR has a quality assurance procedure to enhance service to callers. If a caller's information does not meet the legal criteria to register a report of suspected child abuse or maltreatment, a supervisory consultation is always offered to the caller. Supervisors are on site and available 24/7 to assist SCR staff and provide consultation to callers.

7. Withdrawal of reports

On occasion, the SCR may be register a report in error; that is, the information provided at the time the report was registered did not meet the elements required to register a report of child abuse or maltreatment.

The decision to withdraw a report may be made only by the SCR. Only the SCR may permanently remove a registered report of suspected child abuse or maltreatment from CONNX.

> ***Before accepting the report***
>
> Be sure to review all aspects of the report before accepting the report in CONNX. Once accepted and staged progressed to INV or FAR, a report is usually not withdrawn by the SCR.

[4] "Statewide Central Register Jurisdictional Assignment of Sensitive Child Protective Services Intake Reports" (17-OCFS-LCM-15).

a. *Reasons for withdrawal of a report*

A report can be withdrawn by the SCR when registering the report was due to an error by the SCR. That is, at the point of intake, one or more of the following conditions were known by the specialist to exist:

- The reported child is 18 years old or older
- The subject is not a parent, PLR, or otherwise a valid subject of a report
- The information, as reported, did not provide a reasonable cause to suspect abuse or maltreatment as defined in the SSL
- The NYS Child Protective System/SCR does not have jurisdiction

b. *Procedure for withdrawing or rejecting reports*

Reports can only be withdrawn by the SCR. The LDSS can reject a report if it has not yet been progressed out of the INT stage. When a CPS unit receives a report that it believes to have been registered by the SCR in error, the CPS must reject the Intake. CPS must provide a reason for rejecting the report back to the SCR.

The SCR will evaluate the report/intake and the basis for the LDSS's rejection. The SCR could either agree with the LDSS and withdraw the report or disagree and reassign it to the LDSS. When the SCR reassigns the report to the LDSS, the assigned LDSS must commence an investigation or Family Assessment Response (FAR).

If a report has stage progressed to INV or FAR before it is determined that there was an error at the intake stage, a CPS worker must contact the SCR and speak to the Monitor to determine if there is any action available to correct the issue. The SCR staff member will explain the additional actions that are required of CPS prior to withdrawal. For example, if the case is merged to another case, the potential loss of progress notes will need to be addressed.

8. Joint jurisdictional assignment

Occasionally a child protective report requires intervention from more than one LDSS. Generally, the SCR assigns joint jurisdictional assignment when the subject(s) and the child(ren) alleged to be maltreated or abused are located in more than one LDSS. In these situations, SCR usually assigns two or more LDSSs to jointly address the report and protect the children named in a report.

Possible case circumstances requiring joint jurisdictional assignment include:

- A child(ren) alleged to be abused or maltreated resides in one local social services district (district) and a subject of the report resides in another district.
- The subject(s) and/or reported child(ren) live in one district, but are in another district at the time of the report and would likely need to be interviewed while in that second district (e.g., a child is in a hospital in a different district than his/her residence).
- Multiple children are alleged to be abused or maltreated and the children do not all reside in the same household, and the households in which they reside are in different districts.
- Multiple subjects of the report reside in different districts.
- A different LDSS has care and custody of a child alleged to be abused or maltreated.

When two or more LDSSs must address a report, the SCR must assign primary responsibility to one LDSS and secondary responsibility to any other districts involved. However, whenever there is a joint jurisdictional assignment, it is important to remember that both the primary and secondary CPS units are responsible for the safety and protection of all the children in the report.

The SCR assigns appropriate primary and secondary responsibility as defined by the CONNECTIONS protocol below. This protocol was written to clarify areas of cooperation and administration. It does not signify that one LDSS has less responsibility than another to protect

> If you have questions about CONNX design, contact the CONNX liaison in your Regional Office.

the children in the report. On the contrary, this protocol emphasizes the shared responsibility and accountability of each LDSS in multi-district jurisdiction cases.

OCFS establishes policies and protocols regarding the use of CONNX for case management. *Protocols for primary/secondary assignment apply statewide except for the boroughs of New York City.* Because the New York City's Administration for Children's Services is a single LDSS, a secondary assignment between boroughs *is not necessary*. The report type could be Subsequent, Duplicate, or Additional Information.

The protocol regarding jurisdictional assignment for Intake reports (i.e., new reports made to the SCR) is as follows:

No open case found	Primary jurisdictional assignment is based upon the incoming address of the allegedly maltreated or abused (MA/AB) child(ren) named in the report. Secondary assignments are made as required (see **Section 8,** *Joint jurisdictional assignment).* Report type will be Initial.
OPN-CPS Open case in INT/INV	When an Open case is found involving an OPN-CPS the intake report is merged to the OPN-CPS case and primary responsibility for the report is assigned to the district where the case is open. Secondary responsibility is assigned to the LDSS of the child's address, if different from that of the open case. In other words, the child has an address in an open case that is different from the address in the current report. Additional Secondary assignments are made as required.
OPN-FAR	When an open case is found and the Case List Window shows an **OPN-FAR** case status with a **SVC*** case type, the report is coded as a Subsequent and merged with the **OPN-SVC*** case. Primary responsibility is assigned per the reported address of the MA/AB child(ren) and secondary is assigned to all other appropriate LDSSs.
OPN-SVC/OPN-SVC* Family services case	The asterisk (*) in the term OPN-SVC* denotes that there is a prior history for the family. When an open case is found

with open FSI and/or FSS stage	involving an OPN-SVC/OPN-SVC* case (no OPN-CPS Intake, Investigation, or FAR), the intake report is merged with the OPN-SVC/OPN-SVC* case and primary responsibility for investigation is assigned to the district where the incoming address of the MA/AB children is located. It is not necessary to assign primary or secondary responsibility to the LDSS with case management responsibility. CONNX automatically sends an alert to all other assigned workers in a case when individuals are related and a new stage is created and merged into an open case. The alert to all assigned workers meets the notification requirement to advise the LDSS of any prior history. The LDSS assigned with case management responsibility can view the investigation/FAR case through a search from the person list. The new LDSS is also thus aware that another LDSS has previously had case management responsibility. Secondary assignments are made when required (see **Section 8,** *Joint Jurisdictional assignment).* The report type is *Initial* if the Case List window shows an **OPN-SVC case**, meaning the family has not had prior CPS INT/INV. • The report type is *Subsequent* if the Case List window shows an **OPN-SVC*** case, indicating that the family has had prior **CPS INT/INV**. Additional Information is not taken in an OPN-SVC case because CONNX will not allow a merge to OPN case with SVC no asterisk. CONNX will allow a merge to OPN-SVC* cases.
OPN-SVC/OPN-SVC* with out-of-state address	When an open case is found and the Case List Window shows an **OPN-SVC/OPN-SVC*** case *and* the incoming address of the family is out of state *and* the SCR has jurisdiction to register a report; because there is either a child in need of protection in New York State or the abuse occurred in New York State the intake report is merged to the **OPN-SVC/OPN-SVC*** case. Primary responsibility for addressing the case is assigned to the LDSS where the child is in New York State at the time of the report or to the LDSS where the abuse occurred.
OPN-FAM assigned to the state with SVC* case type	When the Case List Window shows this designation, it means the case is closed. The new report is coded as Initial.

9. Changing jurisdictional responsibilities after intake

Jurisdictional assignments can be changed by the LDSS in limited circumstances. When the SCR has made jurisdictional assignments per these guidelines, but the LDSS obtains information after intake that affects the appropriateness of the assignments, or the LDSSs involved otherwise agree to change the assignments, the LDSSs are responsible for reassigning the reports as needed.

Case List window in SCR and CPS

SCR staff and CPS staff may see *different information on the Case List Window* for OPN-CPS cases.

For SCR staff, the agency/district that appears on the Case List Window for OPN-CPS cases is the LDSS that has responsibility for the most recent open CPS INT/INV stage (the current primary worker) and to which jurisdiction would be assigned if a new report is registered, regardless of the incoming address on the new intake.

For LDSS staff, the agency/district that appears on the Case List Window for OPN-CPS cases is the LDSS of the current primary worker; or, if a Family Services case has been opened, the LDSS of the current Case Manager.

It is also possible that more than one LDSS is involved with an OPN-CPS case. The LDSS with investigative responsibility for an open CPS INT/INV stage *may be different* from the LDSS of the case manager.

If any CPS unit receives a report that does not adhere to these jurisdictional assignment protocols, CPS staff should contact the SCR monitor at 1-800-342-3015.

B. Responses to calls not qualifying as reports

1. Law Enforcement Referrals (LERs)

Whenever the SCR believes that the alleged acts or circumstances against a child described in a telephone call may constitute a crime or an immediate threat to the child's health or safety, but finds that the alleged perpetrator cannot be the subject of a report because he or she is not a parent or other person legally responsible for the child, or another person who can be the subject of a report (e.g., foster parent or day care provider), the SCR must convey the information provided in the telephone call to the appropriate law enforcement agency, district attorney, or other public official empowered to provide necessary aid or assistance [SSL §422(2)(c)].

The SCR does this by making a Law Enforcement Referral (LER) which is transmitted to the New York City Special Victims Unit (if the crime occurred in New York City) or to the New York State Police Information Network (if the crime occurred in counties outside of New York City) for appropriate action.

LERs are not SCR reports of child abuse or maltreatment and are not entered into CONNX. However, the specialist will cross-reference in CONNX to determine if there are any open cases and, if there are any, processes an Additional Information report to be added to the case. If there is no open case, then the SCR does not notify the LDSS about the LER.

2. Reports regarding youth in OCFS residential care

Reports of suspected child abuse or neglect occurring in residential programs for children and youth licensed, certified or operated by OCFS and certain other State agencies no longer fall under the jurisdiction of the SCR. These calls are now made to the Justice Center for the Protection of People with Special Needs (Justice Center.) This change occurred on June 30, 2013. Any concern about abuse or neglect of a child in residential care alleged to have occurred before June 30, 2013 will still be called into the SCR. However, concerns based on incidents occurring after that date regarding the alleged abuse or neglect of a child in a residential care facility must be reported to the Vulnerable Persons' Central Register (VPCR), operated by the Justice Center.

The number for the VCPR is 1-855-373-2122. For further information on the VCPR, go to: www.justicecenter.ny.gov.

3. Information referrals

Along with the multitude of calls the SCR receives each year that provide information sufficient to register a report, there are also many calls that do not provide information that is sufficient to register a report of suspected child abuse or maltreatment. Some of these "non-report" calls are requests for emergency services or referrals, or involve other concerns, which, even if true, do not meet the statutory definitions of abuse or maltreatment.

When they recognize a need that might be met by LDSS services, the SCR's specialists provide callers with contact information for the caller's LDSS offices. Where there is an immediate need, the SCR may offer the caller the emergency after-hours number, which LDSSs must maintain as part of the core Protective Services required by regulations [18 NYCRR 432.2(b)(2)(ii) & (iii); 432.2(e)(3)].

It is only in the most exceptional circumstances, when a caller is unable to take further action beyond calling the SCR, that the SCR staff will take a more active role in facilitating contact with LDSSs.

4. Complaints about teachers

SCR staff advise callers who have complaints about public school teachers outside of New York City to address their concerns with the New York State Education Department (NYSED) Office of School Personnel Review and Accountability (OSPRA) at 518-473-2998 from 9 a.m. to 12 p.m. and from 1 p.m. to 4 p.m. You also may email the office at OSPRA@nysed.gov. For complaints regarding teachers in New York City Public Schools, SCR staff advise callers to contact the NYC Department of Education, Office of Special Investigations at 718-935-3800. In addition, an allegation of physical abuse or sexual abuse of a child by a teacher must be processed as an LER.

C. SCR Service Center operations

1. Overview

The primary responsibilities of the SCR Service Center are to:

- Conduct CONNX Database Checks for current or prospective employees; prospective foster parents, adoptive parents and day care providers; and persons age 18 or older who reside in the homes of prospective foster parents, adoptive parents and family-based day care providers to determine if the person has a prior history of child abuse or maltreatment in New York State [SSL §424-a].
- Support the administrative appeals process, which includes administrative reviews and fair hearings [SSL §§422(8) and 424-a]. The administrative appeals process allows subjects of indicated reports to have these reports reviewed at a preponderance standard of evidence, which is a higher standard of evidence than "some credible" evidence. This could result in a determination that the report should be unfounded and legally sealed, or that the report is not relevant and reasonably related to employment, licensure, or certification in the child care field.
- Process the routine statutory expungement of indicated reports that have reached ten years after the 18th birthday of the youngest child named in the report [SSL §422(6)].
- Process the routine statutory expungement of unfounded reports and requests from subjects for expungement of unfounded reports [SSL §422(5)(b) & (c)].
- Respond to requests for records and other information in compliance with all applicable statutes, regulations, and policies [e.g., SSL §§422(4)(A); 422(5)(a); 422(7)].

2. SCR Database Checks

An SCR Database Check (sometimes referred to as an "SCR clearance" or "SCR screening") is a search of the SCR database conducted by the SCR to determine if a person is a confirmed subject of an SCR report or reports. The inquiring agency will be notified that a person is known to the SCR as a confirmed subject so long as the individual has at least on substantiated allegation in an indicated report upheld by a preponderance of evidence that has been determined to be relevant and reasonably related to employment, certification or employment; or, the individual has at least one substantiated allegation in an indicated report and the individual has waived their right to an administrative appeal.

Specific agencies and programs are required to submit Database Checks for prospective employees, contractors who will provide goods or services to the agency or program, and employees of such contractors when such agency employees, contractors and employees of contractors have the potential for regular and substantial contact with persons cared for by the agency or program [SSL §424-a(1)(b)(i)]. Those agencies may, but are not required to, request Database Checks on current employees, consultants and volunteers who have the potential for regular and substantial contact with persons cared for by the agency or program [SSL §424-a(1)(b)(i)-(iii)].

Generally, those programs and agencies required to conduct database checks include residential programs licensed, certified, or operated by OCFS, NYSED, the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), and the Office of Alcoholism and Substance Abuse Services (OASAS). It also includes certain adult homes and

summer camps licensed by the Department of Health (DOH) [SSL §424-a(3)]. Database Checks also are performed for operators and staff of child day care programs, applicants to be foster or adoptive parents, and persons age 18 or older who reside in the homes of prospective foster and adoptive parents.

Regulatory and policy guidance offered by OCFS and the other relevant State licensing agencies, as well as Section 424-a of the SSL are the best sources for information on what programs or agencies are subject to the SCR Database Check requirement and under what circumstances.

An online clearance system is used by authorized entities to submit the required information about their staff, applicants, consultants, contractors, and volunteers to the SCR. For those agencies not using the online clearance system, the persons to be screened through the SCR must complete Form LDSS-3370, and the agency submits that form to the SCR.

If a Database Check reveals the applicant is not a confirmed subject in any indicated case, the SCR reports that information to the agency in writing.

If the Database Check reveals that the applicant or employee is a confirmed subject in an indicated report or reports, but those reports have not been upheld at administrative appeal at the preponderance standard, the SCR is required to notify the applicant or employee in writing. The letter providing such notification (commonly referred to as a "Valmonte letter") informs the applicant that she/he is a subject in an indicated child abuse or maltreatment report(s) and that such information will be shared with the inquiring agency unless he/she takes advantage of the statutory right to appeal the indicated finding [SSL §424-a(1)(e)].

The subject has 90 days from the date he/she received the letter to request an appeal (See **Section C.1,** *Overview*). If the subject does not respond within this period, the subject has waived his/her right to appeal and the SCR will notify the agency in writing that the applicant is the confirmed subject of one or more indicated reports. If the subject does respond and request administrative appeal within the 90 days, the SCR initiates the administrative appeal process described in the sections below.

Provider agencies must not allow a new employee to have unsupervised contact with a child until the SCR has completed the Database Check and informed the agency of the result.

3. Administrative appeal

Subjects of reports can request administrative appeal (appeal to amend an indicated report) under two circumstances.

Requests made pursuant to Section 422 of the SSL may be made immediately after an investigation has concluded and the subject(s) of the report have been informed the report is indicated [SSL §422(8)]. Such request for amendment must be made in writing within *90 days* of the date on the letter from the LDSS notifying the subject of the determination to substantiate the allegations and indicate the case. The letter requesting administrative appeal must be signed by the person requesting appeal and contain enough information for the SCR to properly identify who they are and what reports they are referencing. It is most useful if the requestor can include a copy of the indication letter with their letter requesting administrative appeal.

Requests for an amendment of an indicated report may be made pursuant to Section 424-a of the SSL after submission of a request for a database check [SSL §424-a(1)(e)] by responding to the "Valmonte letter" described in **Section C.2,** *SCR Database Checks,* above. The subject must

make a request for amendment within 90 days of the date on the Valmonte letter from the SCR informing the subject that a Database Check has shown the person to be a subject of an indicated report(s). If a request for an administrative appeal is not received within the 90 days, the subject has waived their right to administrative appeal and the inquiring entity will be informed that the subject is known as a confirmed subject in an indicated case maintained by the SCR.

Written requests for an Administrative Appeal should be sent to:

Office of Children and Family Services
PO Box 4480
Albany, New York 12204

If a timely request for administrative appeal is received by the SCR under either SSL §422 or SSL §424-a, the SCR initiates the administrative appeal process that includes an administrative review phase and, potentially, a fair hearing phase.

a. *Administrative reviews*

When the SCR receives a request for administrative appeal, the SCR determines whether the request is timely for the report(s) referenced in the letter and, if so, acknowledges receipt of the request by sending an acknowledgement letter to the requestor. The SCR then requests the local case record from the investigating LDSS, which must send all records and reports that support the indication to the SCR as expeditiously as possible but in no event later than 20 days of receiving the request [SSL §422(8)(a)(ii)]. The 20-day time limit applies whether the Administrative Review is requested pursuant to SSL §422(8) or §424-a. The LDSS does not need to submit the CPS INT or INV stage of the CONNX records, as those records can be obtained by the SCR.[5]

> ***Requests for appeal***
>
> Each named subject must write a separate letter requesting an appeal. However, individuals who are married and living together can request via one letter. Both spouses should sign that letter to make it clear that the request is valid for both persons.
>
> An attorney can request an appeal on behalf of a client, but must include a signed representation letter or appropriate release allowing the attorney access to the records of the SCR.

Once the SCR receives the records, OCFS begins the Administrative Review process by reviewing any documentation submitted by the LDSS. Because of court decisions,[6] OCFS uses a standard of "preponderance of evidence" to determine whether the allegations regarding the requestor will remain substantiated. If any allegation against the requestor remains substantiated after Administrative Review, OCFS will also determine whether the substantiated act or acts of abuse and/or maltreatment could be relevant and reasonably related to employment, licensure or certification of the subject in the child care field.

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[5] If the LDSS does not submit any documents to the SCR within the 20-day time limit, the Administrative Review will be conducted using only the CPS INT and INV stage of the CONNX records to support the LDSS's Indicated finding.

[6] Valmonte v Bane, 18 F3d 992 and Lee T.T. v. Dowling, 87 N.Y.2d 699

If Administrative Review determines that the act or acts of abuse or maltreatment are *not* relevant and reasonably related to employment, licensure, or certification in the child care field, the SCR may not reveal the existence of that report in response to a database check request [SSL §§422(8)(a)(ii) & 424-a(1)(e)(iv)]. The report(s) will nevertheless remain indicated and the matter will be referred to the OCFS Bureau of Special Hearings (BSH) for a fair hearing.

Similarly, if the administrative review determines that the act or acts of abuse or maltreatment *are* relevant and reasonably related to employment, licensure or certification in the child care field, this determination is the final agency decision on that issue for any matter appealed under SSL §424-a as part of the database check.

Guidelines for determining relevance

The following guidelines can be used in determining the relevance of substantiated allegations of abuse or maltreatment are relevant and reasonably related to employment, licensure, or certification in the child care field.

1. The seriousness of the incident cited in the indicated report.
2. The extent of the injury sustained by the child named in the indicated report, or the nature of the injury the child was at risk of sustaining.
3. The detrimental or harmful effect the subject's actions or inactions had on the child/children.
4. The relevant events and circumstances surrounding these actions and inactions as these relate to the indicated report.
5. The age of the subject and the age of the child at the time of the incident of child abuse and maltreatment.
6. The length of time that has elapsed since the most recent incident of child abuse and maltreatment.
7. The number of indicated reports of abuse and maltreatment regarding this subject.
8. Documentation produced by the subject regarding rehabilitation. Rehabilitation would mean:
    a. No apparent repeat of the act of child abuse and maltreatment;
    b. Evidence of actions taken by the person to show that he or she is able to deal positively with a situation or problem that gave rise to the previous incident(s) of child abuse and maltreatment; and
    c. Evidence of success with professional treatment (e.g., counseling or self-help groups) if relevant.
9. Demonstrated success by the subject in a child care field.
10. Did the report(s) involve a child's death, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition, or failure to thrive? If so, extra weight must be given to the seriousness of such harms.

The matter will be referred the BSH for a fair hearing on the underlying. allegations of abuse or maltreatment. Through the hearing process, the subject may succeed in having the substantiated allegations overturned and the report unfounded and legally sealed. The subject does not have a right to challenge the "relevant and reasonably related" determination under Article 78 of the Civil Practice Law and Rules until the conclusion of the fair hearing process.

b. Fair hearings

Fair hearings are conducted by the BSH before an Administrative Law Judge [18 NYCRR 434.6(a)]. BSH notifies the investigative agency, the subject, and the SCR when a fair hearing has been scheduled [18 NYCRR 434.5].

The local CPS may be represented by a county attorney or by any authorized LDSS employee. The agency may present documentary evidence and call witnesses to testify [18 NYCRR 434.8(d)].

The subject of the report may choose to be represented by an attorney, but legal counsel will not be provided to the subject, even if he/she is indigent. Subjects of indicated reports may represent themselves and have witnesses testify on their behalf [18 NYCRR 434.7, 434.8(d)].

As with the administrative review, the standard of evidence at the hearing is whether the indicated determination is supported by a preponderance of the evidence [18 NYCRR 434.1].

Hearings pursuant to Section 422(8) of the SSL.

In a hearing held pursuant to [SSL §422(8)], if the decision finds that one or more indicated reports is supported by a preponderance of the evidence, the hearing will also determine whether the acts or acts of child abuse and/or maltreatment that gave rise to the indicated report(s) could be relevant and reasonably related to employment or licensure in the child care field, unless the Administrative Review already determined that they were not relevant and reasonably related [SSL §422(8)(c)(ii)].

After the hearing decision has been issued, SCR staff will update CONNX and notify the relevant parties accordingly. If the subject wants to appeal the fair hearing decision, he/she must file a proceeding in court under Article 78 of the Civil Practice Law and Rules (CPLR). The appeal can address both the abuse and maltreatment determination and the relevant and reasonably related determination. The subject has a period of four months from receipt of the hearing decision to commence such a proceeding [CPLR §217(1)].

Hearings pursuant to Section 424-a of the SSL.

In a hearing held pursuant to [SSL §424(a)], the hearing decision will only address if one or more indicated reports is supported by a preponderance of the evidence. After the hearing decision has been issued, SCR staff will update CONNX and notify the relevant parties accordingly.

If the subject wants to appeal the fair hearing decision, or the administrative review determination on relevant or reasonably related, he/she must file a proceeding in court under Article 78 of the Civil Practice Law and Rules (CPLR). The subject has a period of four months from receipt of the hearing decision to commence such a proceeding [CPLR §217(1)].

c. *LDSS documentation at administrative review or fair hearing.*

To meet the burden of proof at administrative review or fair hearing, LDSS may submit any relevant documentation, including, but not limited to:

Court records, legal papers, law enforcement documents

- Relevant legal records or documentation related to the indicated determination must be provided by the LDSS to the SCR or presented at hearing
- Reports, orders of protection, investigation records, charts, diagrams, letters and any other relevant material produced or maintained by police officers, law enforcement agencies, probation officers and related personnel

Progress notes

At an administrative review, the CPS INT and INV stage progress notes can be accessed by the SCR and shared with the attorney conducting the administrative review. This is not true at hearing, and CPS must provide any relevant information obtained from the source, interviews and meetings with parents/PLR and children, descriptions of any injuries, parents' level of cooperation, etc.

> ***Court finding of abuse or neglect***
>
> During an administrative review or fair hearing, CPS must inform OCFS if a Family Court has made a finding of abuse or neglect against the subject of the report that is based upon the same incident or actions that gave rise to the indicated report of abuse or maltreatment under review. This will be considered an irrefutable presumption that the allegations in the report are supported by a fair preponderance of evidence [SSL §422(8)(b)(ii)]. Production of the petition and order will be dispositive for any allegations related to the information in the petition and order [SSL §422(8)(b)(ii)].

Medical and mental health records

- Relevant reports, evaluations, letters or other materials from doctors, medical practitioners, hospitals or other clinicians. Originals of radiological images and similar items should not be submitted to the SCR but can be submitted at the hearing.
- Written documentation from medical professionals that explain what was revealed by procedures or case notes where interviews with professionals provide such detail
- Relevant psychological/psychiatric reports, evaluations, examination results or related material from mental health practitioners

Educational records

- Relevant reports, attendance records, letters, evaluations, IEP information, academic progress reports or other relevant documents from school administrators

Photographs

- Relevant printed or digital photographs taken or obtained during their investigation. Ideally, photographs should be accompanied by a progress note or other documentation describing the contents of the image (e.g., what the image reveals, the person in the photo, time and date, etc.).

Video or audio files

- Video or audio taken or obtained during the investigation may be submitted, but OCFS cannot guarantee it has the correct technology to view the videos. Therefore, when LDSS utilizes a video for evidence, such video should be accompanied by a written description of the visual and/or audio information on the video. LDSS should not submit original videos or any other original media.

4. Early expungement of unfounded reports

Although unfounded reports are by law normally retained in the SCR database for ten years from the date of the report [SSL §422(5)(b)], a person who is a subject of an unfounded report may submit a request to the SCR asking that the record of the report be expunged (i.e., deleted) from the SCR database prior to the end of the ten-year period for which such reports are normally retained. OCFS, at its discretion and in limited circumstances, may grant such a request. The standard applied for such a request is "clear and convincing evidence" [SSL §422(5)(c)]

The SCR staff processes written requests from individuals or their authorized attorneys for early expungement of unfounded reports (i.e., expungement prior to the end of the ten-year period). To determine whether to grant a request for early expungement, OCFS reviews the legally sealed local CPS record that supports the unfounded determination, as well as any documents or information provided by the subject of the report in support of his/her request for early expungement. The burden of proof, however, rests on the subject of the unfounded report.

OCFS may grant an expungement of an unfounded request under either of the following two circumstances [SSL §422(5)(c)]:

- The subject of the unfounded report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; or
- The subject of the unfounded report shows that the source of the unfounded report was convicted of the crime of having made an intentional false report to the SCR in connection with the unfounded report at issue.

In regard to the first circumstance, the statute provides that the absence of credible evidence supporting the allegation is not sufficient to expunge the record. An example of a situation in which early expungement might be granted could be that a person is alleged to have left her three-year-old child alone and unsupervised in her home, but the person has no children.

In regard to the second circumstance, Penal Law Section 240.50(4) provides that it is a Class A misdemeanor to make an intentional false report to the SCR. Accordingly, a criminal conviction for making an intentional false report shows that the unfounded report that resulted had no legitimate basis.

There is no right to a hearing if the expungement request is denied; the decision to expunge a record is determined by document review only.

5. Expungement of reports due to passage of time.

Records of reports of child abuse and maltreatment held by the SCR must be expunged after a period specified by law.

- Unfounded reports are expunged 10 years after receipt of the report [SSL §422(5)(b)].
- FAR reports are expunged 10 years after receipt of the report [SSL §427-a(5)(c)].
- Indicated reports are expunged 10 years after the 18th birthday of the youngest child named in the report [SSL §422(6)].

CONNX expunges such records automatically several times a year. When a report is scheduled to be expunged, the SCR notifies each local CPS that it must destroy any of its own records of the case. See this CONNX tip sheet for more information:

http://ocfs.state.nyenet/connect/jobaides/Tip%20sheets/Records%20Retention%2010-14-15.pdf

6. Requests for information

All documents and records maintained by the SCR related to CPS reports are strictly confidential [SSL §422(4)(A)]. Many people request information from the SCR, but only certain people may obtain information and only in specified circumstances defined in the law.

The people and agencies allowed to receive copies of indicated reports and reports of pending investigations are listed in SSL §422(4)(A)(a)-(aa). If the LDSS staff have any questions regarding the release of confidential documents, they should seek advice from their LDSS attorney or other legal counsel authorized to represent LDSS.

Access to unfounded reports is extremely limited, but the named subjects of an unfounded report are entitled to receive a copy of their own reports [SSL §422(5)(a)(iv)]. If the LDSS staff have any questions regarding the release of unfounded reports, they should seek advice from the LDSS attorney or other legal counsel authorized to represent LDSS.

A person who is entitled by law to receive CPS records may delegate an individual or agency (e.g., attorney, advocacy organization) to receive the materials on his/her behalf. The person entitled to receive the records must provide the SCR with a signed authorization form indicating he/she is consenting to the release of the information and the name, address, and other contact information for the authorized recipient. The authorization form must be specific to SCR or CPS records; the SCR will not provide records when the subject has provided only a Health Insurance Portability and Accountability Act (HIPAA) release or other general release for information.

7. Confidentiality regarding SCR Service Center inquiries

SCR staff members are prohibited from discussing or providing confidential information over the phone, even if the caller can provide case specific information (e.g., name of child, case identification number, etc.). It is a violation of law for anyone to release confidential information obtained or maintained by the SCR [SSL §422(12)]. OCFS and SCR employees may also be disciplined for confidentiality violations, including termination of his/her employment.

Chapter 4: **Special circumstances in report processing**

A. Multi-district jurisdictional assignment A-1

1. Primary and secondary responsibilities A-1

   a. General responsibilities A-1

   b. Specific responsibilities A-1

2. Jurisdictional assignment changes in open cases A-3

B. Different types of CPS reports B-1

1. Duplicate reports B-1
2. Additional Information reports B-1
3. Subsequent reports B-2
4. Consolidating Report Investigations and Consolidating FAR Stages: B-3

C. Out-of-town inquiries C-1

1. Out-of-state inquiries C-1
2. District-to-district inquiries C-1

D. Guidelines for case transfers D-1

1. Transfers – Pre-determination or case closing D-1
2. Transfers – Indicated/Open services CPS cases D-2
3. Movement out of state D-2

E. Sensitive and high-profile investigations E-1

1. Transferring a sensitive case to another LDSS E-1

   a. When an LDSS employee is named in a report E-1

   b. When a person named in a report is known to a CPS employee E-2

   c. Responsibilities after a sensitive case is indicated E-2

Chapter 4: **Special Circumstances in Report Processing**

The Statewide Central Register of Child Abuse and Maltreatment (SCR) sometimes receives calls that need particular handling so as to best support the local Child Protective Service (CPS) in carrying out its responsibilities under New York State Social Services Law. The following procedures reflect circumstances where reports registered by the SCR require special handling. There may be circumstances that fall outside what is outlined here. When this occurs, open communication and adherence to applicable laws and regulations will guide practice solutions.

A. Multi-district jurisdictional assignment

Occasionally, a child protective report requires a joint investigation by more than one local departments of social services (LDSS). Generally, this occurs when the principals in the investigation (such as allegedly maltreated or abused children and/or alleged subjects) are located in different local social services districts. When two or more LDSSs are assigned investigative responsibility, communication among the districts is of key importance, and each CPS unit must assume a fundamental role and responsibility for the safety and protection of all the children in the report.

1. Primary and secondary responsibilities

Generally speaking, the SCR assigns primary responsibility for the report to the district where the allegedly maltreated or abused (MA/AB) child(ren) named in the report resides.

Secondary responsibility is typically assigned to the district where the alleged subject of the report resides, when it is different than the MA/AB child's residence, or to the district that is the current location of an MA/AB child or alleged subject (e.g., hospital, school, jail). The CPS that is assigned primary responsibility has the authority to assign secondary responsibility to another LDSS when appropriate if the SCR has not done so. If it is appropriate for the primary LDSS to assign secondary responsibility or to reassign a report to another LDSS, prior consultation with that LDSS is necessary. For more information on how to reassign or assign a report, see *CONNECTIONS Step-by-Step Guide: Training for CPS Workers.* For more information on SCR assignment guidelines for joint investigative jurisdictional assignment, see **Chapter 3,** *Statewide Central Register Responsibilities.*

a. *General responsibilities*

Both the primary district and the secondary district are responsible for fulfilling the statutory and regulatory requirements for a report of suspected child abuse or maltreatment. This includes, when appropriate, initiating Family Court Article 10 proceedings in accordance with FCA §1015 (See **Chapter 6, Section B** and **Chapter 9, Section J**).

b. *Specific responsibilities*

The primary district is responsible for providing overall coordination for the report.

At the initiation of the investigation phase, the designated person of the primary district should contact the designated person of the secondary district. This contact should be made within the first 24 hours of receipt of the report. The purpose of the first contact is to discuss with the secondary district what actions are necessary for each district to complete in order

to effectively conduct the investigation and assess the immediate safety of all children involved in the case.

Following the initiation of the investigation, the *primary* district is responsible for:

- Determining and documenting necessary interventions to support immediate child safety;
- Providing required notification letters to the subjects and other persons named in the report, or requesting the secondary district to do so for the subjects or other persons named in the report in the secondary district;
- Completing the preliminary (7-day) Safety Assessment and all other ongoing assessments of safety and risk for the children and households within their district;
- When the case is assigned to the Investigation track:
  - Coordinating the gathering of information with the secondary district in order to make an investigation determination
  - Completing the investigation determination Safety Assessment
  - Competing the Risk Assessment Profile (RAP)
  - Completing the 60-day determination and investigation conclusion
  - Coordinating necessary activities to fulfill standards for the delivery of Child Protective Services
  - Arranging for services for family members within the primary district and requesting the secondary district to provide needed services to family members in their district
- When the report is assigned to the Family Assessment Response (FAR) track:
  - Coordinating the gathering of information with the secondary district in order to assess the family's strengths and needs
  - Completing the Family-Led Assessment Guide (FLAG)
  - Providing ongoing informal assessments of safety of all children in the home
  - Completing the RAP, where the CPS uses this tool, or an assessment of the risk to children in the family
  - Determining solutions for the family's immediate problems and assisting the family in obtaining needed services to address their needs

Following the initiation of an investigation, the *secondary* district is responsible for:

- Completing all investigative activities as per the request of and/or negotiation with the primary district. Generally speaking, the secondary district will be responsible for all activities involving people or agencies located in its district
- Determining and documenting necessary interventions to support the immediate safety and ongoing assessments of safety and risk for the youth and households within its district
- Completing case progress notes and other case documentation in accordance with time requirements
- Providing the primary district with all evidence gathered and documented in contemporaneous case notes, including but not limited to law enforcement reports,

certificates of conviction and reports and relevant documents obtained from collateral contacts, etc.

Following the initiation of a family assessment response, the secondary district is responsible for:

- Completing all assessment activities as per the request of and/or negotiation with the primary district. Generally speaking, the secondary district is responsible for all activities involving people or agencies located within its district
- Observing whether there are any threats to the immediate safety of children named in the report
- Completing case progress notes and other case documentation in accordance with time requirements
- Providing the primary district with all information gathered and documented in contemporaneous case notes, including any information obtained from collateral contacts, etc.

2. Jurisdictional assignment changes in open cases

If there is a need to assign secondary responsibility to an open case or to switch primary and secondary assignments, a CPS worker in the primary district should contact the designated person in the secondary district to discuss a change or addition to assigned responsibilities.

Once a report has been accepted by an LDSS, the SCR does not reassign the report or add jurisdictions. This must be done at the district level. For more information, see *CONNECTIONS Step-by-Step Guide: Training for CPS Workers.*

B. Different types of CPS reports

When a new call is made to the SCR regarding a specific family for which there is an open CPS investigation or FAR, the SCR could register the Subsequent report as another intake, a Duplicate Report, or an Additional Information report. The SCR has specific rules on when a report can be registered as a Duplicate or Additional information. If the new report does not meet these requirements, it will be registered as a Subsequent report. LDSSs have greater flexibility in identifying reports that are connected, and may mark such reports as a Duplicate or consolidate the report with an open investigation of FAR. Caseworkers should refer to "Guidelines for Consolidating Investigations" in the *CONNECTIONS Step-by-Step Guide* for more detail on when it is appropriate to consolidate a report.

1. Duplicate reports

In order for the SCR to process a new report as a duplicate report, the new report must provide the same or similar account of an incident(s) as an earlier registered report that is still open and undergoing an investigation, and **no new information that would add a subject, child or allegation to the previous report(s).**

The new intake must name at least one of the same alleged subjects (it does not have to name all of them), at least one of the same allegedly maltreated or abused (MA/AB) children (it does not have to name all of them), and include the at least one of the same allegations (it does not have to include all of them) as the open report. When the SCR receives such a report, it designates it as a "Duplicate" report and merges the new report into the existing open report.

The investigatory requirements for a duplicate report are the same as those for an "original" report. If, however, investigatory requirements have been satisfied for the existing case, the efforts in that case do not need to be repeated. For example, if notifications have already been sent, they don't need to be sent again. See the next section for system actions the CPS worker is required to perform.

A duplicate report is forever linked to the original report. Although the duplicate intake remains online and available for review, CPS workers do not need to provide additional documentation of safety or risk or engage in any other additional investigatory or FAR actions to respond to the duplicate report. The CPS determines whether the new duplicate report requires additional actions.

2. Additional Information reports

The SCR may receive information that is relevant to a CPS case that is either open for services or undergoing an investigation or FAR, but the information does not include allegations of child abuse or maltreatment, or is otherwise insufficient to register a report. In those instances, the SCR may register an Additional Information (*Add Info*) report. The Add Info contains no allegations of suspected abuse or maltreatment. However, it should include additional useful information related to the report to which it is connected.

The SCR combines the Add Info with the "original" report, adding new information into the case record. As there are no additional allegations of abuse or maltreatment associated with the Add Info, the CPS worker may not need to engage in any new actions precipitated by the Add Info, depending on the nature of the information added.

In all cases, the information in the Add Info should be read and assessed by the CPS worker to determine its importance in the investigation or FAR. The CPS worker and/or the supervisor

should determine what actions, if any, are necessary in the case in response to the information in the Add Info. CPS does not need to send new notification letters for an Add Info.

3. Subsequent reports

Subsequent reports are registered by the SCR when families have either:

- A child abuse or maltreatment report still undergoing an investigation or FAR at the time the SCR receives a subsequent report; or
- An existing open case, following an indicated child protective investigation, at the time the SCR receives a subsequent report.

AND the new report adds a subject, allegedly abused or maltreated child, or allegation to what was in the report being investigated or that was previously determined.

CPS must respond to a subsequent report by conducting an investigation as required by statute and regulation or FAR, just as it would for an initial or "original" report.

Whenever there is an existing open case and a call made to the SCR alleges child abuse or maltreatment with the same case composition, the SCR registers the new report as a subsequent report, rather than as a Duplicate or Add Info report, if new information would result in the addition to the open report of:

- A new subject(s)
- A new victim(s)
- New allegations

The same standards apply when there is a report of a child fatality in a family for which there is an open investigation. When a fatality report has been registered, and is still open, additional reports about the same fatality are not registered as new reports but as duplicate, subsequent, or additional information reports.

The SCR merges subsequent reports in CONNECTIONS (CONNX) into the existing open case and the subsequent report receives the same Case ID number as the original report. The subsequent report retains its own separate Intake Case ID and Stage ID.

The subsequent report will not show the same Case ID as the open case with which it is combined until after the daily overnight Case Merge/Split batch processing. After the batch process occurs, the subsequent report will have the same Case ID as the "original" report.

The following requirements apply to all subsequent reports that are *not* consolidated into existing investigations.

A subsequent report must receive a full investigation or FAR and be fully documented in CONNX. The subsequent report displays on the Assigned Workload as a separate report/stage. At the conclusion of the investigation, all allegations in a subsequent report must be substantiated or unsubstantiated.

When the source of a subsequent report is a mandated reporter, that person is entitled to information about the determination of a report that is investigated or to be informed that the report is being addressed by FAR, regardless of whether the report remains in subsequent report status or is later consolidated into an open report by the LDSS.

A CPS worker must provide the necessary notifications for every subsequent report received, whether it is received prior to or following a determination of the original case. See **Chapter 12,** *Notifications***,** and **Appendix 11.A.5**.

Investigation

A new Notice of Existence letter must be mailed or delivered to each subject of the subsequent report and any non-culpable parent, guardian or other person legally responsible for the child(ren), within seven days of the receipt of the subsequent report, advising them of the existence of the report [18 NYCRR 432.2(b)(3)(ii)(f) & 432.3(j)]. This notice is generated in CONNX and is pre-filled with the name and address information maintained for each individual. The CPS worker must check the accuracy of the information prior to printing the notice. The CPS worker also must document in Progress Notes the date and method of delivery used [18 NYCRR 428.5] (See **Chapter 12,** *Notifications*).

If an investigation finds some credible evidence to support the allegations, the CPS must provide a Notice of Indication letter to each subject and each other adult person(s) named in the subsequent report within seven days of the investigation conclusion [18 NYCRR 432.3(k)]. This notice is generated in CONNX and is pre-filled with the name and address information for each individual. It is important to check the accuracy of the information prior to printing the notice. The date and method of delivery used for providing each Notice of Indication must be documented in Progress Notes [18 NYCRR 428.5].

If an investigation does not find some credible evidence of abuse or maltreatment, a Notice of Unfounding letter must be sent. This letter is computer-generated by the SCR. The SCR sends this letter to each subject and each other adult person(s) named in the report 14 days after an investigation is closed, using the name and address information entered into CONNX by CPS (see **Chapter 12,** *Notifications*).

Family Assessment Response

The CPS must provide written notification of the report to the parents of the children named in the report [SSL §427-a(4)(d)(i); 18 NYCRR 432.13(e)(2)(i)]. The CPS worker must document in Progress Notes the date and method by which parents were notified [18 NYCRR 428.5; 432.13(e)(5)].

For reports addressed by FAR, no more than seven days after closing the case, a CPS worker must provide a written notification to the parents of children named in the report that their case has been closed. The notification must inform the family that the record is sealed and will be maintained for ten years from the date the report was received and must also inform them that the subject of the report has the right to access the records [18 NYCRR 432.13(e)(2)(viii)]. Letters for this purpose are available in CONNX. Whenever feasible, a CPS worker should also discuss the case closing with the family.

4. Consolidating Report Investigations and Consolidating FAR Stages:

LDSSs have the option of consolidating a report only after a subsequent report has been progressed to the Investigation or FAR stage. In Consolidation, the CPS worker closes the investigation or FAR stage associated with the subsequent report and consolidates it into an ongoing, open investigation or FAR stage by selecting the status “Close as duplicate.”

Consolidating report investigations and consolidating FAR stages differs from (and goes beyond the scope of) changing a report type to Duplicate. Duplicate reports reflect specific report criteria that are applied at intake by the SCR, while consolidating reports reflects the knowledge of CPS

working with the family. Investigations and FAR stages may be consolidated regardless of whether or not the subsequent report meets the current intake criteria for a Duplicate report.

Since CPS has direct knowledge of the children and adults listed in the report, it is in a better position to determine whether a newly assigned report is duplicative of an ongoing report investigation. In these instances, the worker and supervisor may decide to consolidate the investigations.

However, a Fatality Investigation in which a 24-Hour Fatality Report and/or a 30-Day Fatality Report associated with a subsequent report has been started (in a status other than NEW) *cannot* be consolidated into the ongoing, open fatality investigation. A DOA/Fatality allegation can be added to an Investigation stage only at SCR Intake. LDSS CONNX users cannot add a fatality allegation to an open investigation.

See "Guidelines for Consolidating Investigations" in *CONNECTIONS Step-By-Step Guide: Training for CPS Workers* and the CONNECTIONS FAR Build Job Aid, "Consolidating a FAR Stage."

Consolidating report investigations and consolidating FAR stages are designed to:

- Enhance family engagement strategies by fostering a more strength-based and minimally intrusive approach to child protective investigations
- Avoid unnecessary duplication of effort while maintaining the integrity of the investigation or FAR
- More accurately reflect New York State's rate of repeat abuse and maltreatment by combining multiple reports involving the same basic family circumstances into the same Investigation stage
- Support the ability to change an Intake report type to Duplicate after the report has been stage progressed

A subsequent report can be consolidated into an ongoing open investigation or FAR stage only if the intake date of the subsequent report is within 53 days of the prior report intake date. The process of consolidating reports must be completed within six (6) calendar days of the subsequent report intake date. There are many factors that CPS workers should consider before deciding whether to consolidate a subsequent report and technical criteria that must be met, as well as practice considerations that they may need to address after consolidation.

For more information, see "Guidelines for Consolidating Investigations," in *CONNECTIONS Step-By-Step Guide; Training for CPS Workers*. Also see the OCFS policy directive "Practice Changes Associated with CONNECTIONS Build 16" (03-OCFS-ADM-01) and the *CONNECTIONS Child Protective Services Handbook*.

C. Out-of-town inquiries

There are two types of out-of-town inquiries (OTIs): out-of-state and district-to-district.

1. Out-of-state inquiries

An out-of-state OTI is usually a written request to the SCR from another state that is conducting a child protective investigation of a person who previously resided in New York State. An OTI may also be a request for a database check of a person who now lives in another state but previously lived in New York State.

A CPS from another state may be entitled to information from indicated reports or open investigations from the SCR's or LDSS's records for the purposes of conducting a child abuse/maltreatment investigation. The requesting state must certify (1) that the records and reports are necessary for a CPS investigation regarding the person who is the subject of the requested report; (2) that the requesting state will use the information provided only for its CPS investigation; and (3) that the records and reports from New York will not be re-disclosed to any other agency or person. The request for CPS report information by another state must be in writing, must contain the certification described above [SSL §422(4)(A)(s)], and must be mailed or faxed to the SCR.

The federal Adam Walsh Child Protective and Safety Act of 2006 (P.L. 109-248) requires states to check the child abuse and neglect registry of each state in which prospective foster and adoptive parent(s) and any persons 18 years of age or older who live in their homes have resided in the preceding five years for the purpose of determining if they have a history of child abuse or neglect. CPS should *not*, however, provide information directly to other states for this purpose. Other states must direct all such inquiries to the SCR. The number for such inquiries is 518-474-5297, Monday through Friday, 8 a.m. to 5 p.m.

2. District-to-district inquiries

A district-to-district OTI is made by one LDSS to another LDSS within New York State for assistance on a specific matter that involves a report of child abuse or maltreatment being investigated by the LDSS making the request. The assistance requested usually requires action that cannot easily be initiated by the CPS in the LDSS where the report is registered (e.g., the counties are far apart geographically and it is necessary to contact a relative in the second county). Generally, a district-to-district OTI does not involve the SCR; the LDSSs involved communicate by telephone and written communication to resolve the matter, often by assigning secondary responsibility for the case to the second LDSS.

D. Guidelines for case transfers

CPS case transfers generally occur when a family moves from one district to another district within New York State during the course of an open CPS investigation or FAR, or when there is an open protective services case. The case may be transferred to the LDSS of the district to which the family has relocated. The LDSS making the transfer relinquishes case responsibility and primary legal accountability going forward. In some instances, the LDSS may maintain a supportive responsibility (secondary assignment) if a significant family member continues to reside in that district. The CPS worker in the LDSS that wishes to transfer the case should contact the CPS worker in the other LDSS to discuss the details of the transfer and how to best serve the family, as described in the next section.

If the case is being addressed by FAR and the LDSS that will receive the case does not provide this differential response, the original LDSS must either complete and close the case or, if its work is not done, close the case and call in a new report, which will be investigated by the receiving CPS.

1. Transfers – Pre-determination or case closing

The LDSS initiating the transfer should take the following general steps:

- Determine the family's new address, if not already known. This can often be accomplished by contacting the former school district or the new school district, if there are children of school age in the case, or by making other collateral contacts.
- Decide whether a determination can be made prior to the case transfer. If there is credible evidence of abuse or maltreatment, the case should be indicated at the time of the transfer. If the case can be determined to be unfounded, no transfer will be necessary. If no determination can be made before transfer, the sending LDSS must obtain approval from the receiving LDSS prior to transferring the case.
- Re-evaluate safety and risk whenever a family in an open case moves or has informed the LDSS of a planned move.
- Contact the receiving LDSS to facilitate discussion and reach agreement on the case transfer. Some negotiation may be necessary before all parties are satisfied with the transfer. It is best to conduct these discussions by direct phone contact rather than through voicemail or e-mail messages. CPS workers should make sure that agreements are confirmed before proceeding with a transfer.
- Discuss with the receiving LDSS the investigative findings and service recommendations to date, including services the family may have requested. If the case was addressed by FAR, discuss the nature of the work that has been done with the family, including the concerns, needs, and strengths identified with the family and any plans made or recommendations for using this information going forward, either in the context of an investigation approach or FAR, depending on which will be used.
- Notify the receiving LDSS of all relevant information, including emergency action that may be required.
- Complete or update case information, including all required case documentation within CONNX, such as case progress notes and due or overdue safety and risk assessments.
- If applicable, notify any supportive (secondary) LDSS when a case transfer has occurred or is about to occur

2. Transfers – Indicated/Open services CPS cases

When an LDSS believes that an open, indicated case would be better served through management by another LDSS, the sending LDSS should make direct telephone contact with the intended receiving LDSS to discuss the service needs of the case and obtain agreement on the case transfer.

In general, the transfer of an open services case is based upon the service needs and overall best interests of the family. For example, if a case is currently receiving preventive services, the request would be for preventive services to continue and to be provided by the receiving LDSS. Similarly, if a family is receiving foster care services, the case would be transferred as a foster care case. If a case is open for CPS monitoring in the sending LDSS, CPS monitoring responsibilities may also be transferred. However, an ongoing services case can be transferred only if the receiving LDSS accepts the case and agrees to provide ongoing services to the family. In addition, if applicable, the sending LDSS should notify any supportive LDSS when a case transfer has occurred or is about to occur.

Once there is agreement about a case transfer, the sending LDSS should refer all appropriate case information and documents to the receiving LDSS. The information and documents should include, but are not limited to:

- Current list of family members and their addresses, phone numbers, and any other contact information
- Summary of case activity, including actions necessary to support child safety
- Reason for the case transfer
- Explanation of the immediate service needs of the family
- Date of indication and supportive documentation/reasons
- Name of caseworker(s) involved and phone number(s)
- Case initiation date
- Updated case progress notes
- Updated medical information
- Psychological reports
- Law enforcement information
- Notification to any Family Court where there is a standing order or a pending case
- Family court documents (petitions, orders)
- Initial and most recent FASP (including safety & risk assessments)
- Evaluations (educational, psychological etc.)
- Information related to the attorney for the child (name, contact information, reports)

Some OCFS regions have written protocols that outline agreed-upon case transfer procedures among their LDSSs. CPS workers should contact their respective Regional Offices to obtain copies of any such written protocols and procedures.

3. Movement out of state

When an LDSS has reason to believe that a family that has been reported for child abuse or maltreatment has moved out of state, regardless of the status of the report, the family should be referred to the appropriate out-of-state agency if the child(ren) are or may be in need of

protection. After verifying to the extent reasonably possible that the family has in fact moved out of state, the CPS worker should take the following steps**:**

- Attempt to obtain the family's new address in the state where the family has moved. If the caseworker has not been given the address, he/she should attempt to locate the family through a variety of other methods. For example, the worker could ask the child(ren)'s former school district where the child(ren)'s school records have been sent.
- Make the determination for any pending child protective investigation by completing the investigation conclusion and selecting the reason code that indicates the family has moved out of jurisdiction.
- Consider making a child protective report to the appropriate state agency in the family's new state. A new report should be made if there are any ongoing issues of safety and/or imminent risk of harm. CPS workers can obtain a listing of state agencies and contact information from the SCR, which can also assist in determining the appropriate out-of-state agency.
- Notify the Family Court that the family has moved out of state in cases where there is a standing order or a pending court case.

E. Sensitive and high-profile investigations

When a case is marked "sensitive," access to case records is automatically limited, and the case may need special handling. This occurs where such protection is reasonable and appropriate to protect the privacy and confidentiality of the record. This may include, but is not limited to, cases in which:

- A Subject, Child, or Other Person Named is famous or in the public eye, or the case is receiving a high level of public attention (e.g., a celebrity, public figure, or a prominent person in the community, is involved with or is related to the case; a child fatality or near-fatality that is receiving a lot of attention by the press and/or media)
- A Subject or Other Person Named is a CPS worker, an SCR employee, or works for or with the LDSS or OCFS in a position in which they are known to the investigatory agency
- A Subject or Victim is otherwise personally known to local CPS staff from an arena outside the scope of employment

In such circumstances, the SCR or LDSS may choose to mark the case "sensitive" to further guard the individual's right to privacy and maintain case confidentiality. In sensitive cases, access to case information is restricted within the investigating LDSS and throughout the CONNX environment.[1] For more information, see "Statewide Central Register Jurisdictional Assignment of Sensitive Child Protective Services Intake Reports" (17-OCFS-LCM-15).

1. Transferring a sensitive case to another LDSS

a. *When an LDSS employee is named in a report*

When an LDSS worker (a CPS caseworker or other child welfare staff person, or person in a position of authority within the LDSS) is reported as a subject, the case should be marked as "sensitive," and responsibility for the case should be assigned to a neighboring LDSS to avoid either an actual conflict of interest or the appearance of a conflict of interest. This should be done only after obtaining the agreement of the other LDSS's CPS or where there is a previous reciprocal agreement between the LDSSs. This action can help the LDSS avoid any questions about the independent nature of its response, and also provide the subject with another layer of protection of his or her privacy and right to confidentiality.

If the SCR is aware of a potential conflict at the point of intake, it will mark the case "sensitive" and, after conferring with and obtaining its agreement, will assign investigative responsibility to a neighboring LDSS. If the SCR does not identify the issue at intake, the LDSS should designate the case as "sensitive" and then follow case transfer procedures. The LDSSs should consult with the appropriate OCFS Regional Office if technical assistance is needed or warranted at any point in this process.

Reports of suspected child abuse and maltreatment involving other LDSS staff (e.g., income maintenance, medical assistance, etc.) generally should be marked "sensitive" and CPS may need to determine if it is appropriate to transfer the case to a neighboring LDSS

An LDSS occasionally may also transfer other sensitive cases to another LDSS, such as when a person with a high profile in the originating county is named in the report. There may

[1] *CONNECTIONS Case Management Step-by-Step Guide,* Module 2, pp. 24-27.

be other special circumstances that need to be assessed for “sensitive” handling on a case-by-case basis.

b. *When a person named in a report is known to a CPS employee*

When the subject(s) or other person named in a child abuse or maltreatment report is already personally known to a CPS worker from outside the scope of the job, it is advisable to mark the case “sensitive” and assign it to a worker who does not know the subject(s) or other person named in the report to conduct the investigation or FAR. Because this situation typically would involve only one CPS worker, there is no need to involve an outside LDSS.

c. *Responsibilities after a sensitive case is indicated*

When a neighboring CPS unit assumes the responsibility for investigating or providing a family assessment response for a sensitive report, it may terminate its involvement with a case when it has:

- Completed required safety and risk assessments and/or a FLAG
- Addressed the child(ren)'s welfare and protection
- Rendered a determination when there has been an investigation
- Developed a service plan, where appropriate

After the neighboring CPS, has indicated the case and developed a service plan, the case may be transferred to the district in which the subject(s) resides. If the neighboring LDSS finds that it is necessary to initiate a court proceeding, the actions based upon those findings must be undertaken by the "home” LDSS in its own jurisdiction [FCA §1015].

If a subject of the report requests an administrative review and a fair hearing under either SSL §422(8) or SSL §424-a, the neighboring LDSS that made the original determination will be required to present the case record and to appear at the hearing as part of the normal appeals process. The hearing may be scheduled in the subject’s home district.

Chapter 5: **Family Assessment Response (FAR)**

A. Introduction to Family Assessment Response (FAR) A-1

1. Definition and description of FAR A-2
2. Requirements for LDSS participation A-2

B. Reports eligible for FAR B-1

1. Restrictions on assigning reports to FAR B-1
   a. *Foster care and day care* B-*1*
   b. *Child day care* B-*1*
2. Allegations ineligible for FAR B-1
3. LDSS criteria for FAR inclusion B-2
   a. *Allegations eligible for FAR* B-*2*
   b. *Using FAR for court-ordered investigations* B-*2*

C. Determining the appropriate track assignment C-1

1. Initial track assignment C-1
   a. *Informing the family about the FAR option* C-*2*
   b. *Changing the initial track assignment* C-*2*
2. Finalizing the track assignment C-2
   a. *Conditions necessary to finalize assignment to FAR track* C-*2*
3. When parents disagree about FAR participation C-3
4. Time limit for final track assignment C-4
5. Documenting the rationale for the track assignment C-4

D. Conducting the family assessment D-1

1. Initial contact with the family D-1
2. Required casework activities D-2
   a. *Provide information and written notification to the family about FAR* D-*2*
   b. *Obtain the family's consent to use FAR* D-*3*
   c. *Complete the seven-day safety assessment* D-*3*
   d. *Engage the family* D-*3*
   e. *Complete at least one Family-Led Assessment Guide (FLAG)* D-*4*
   f. *Conduct ongoing risk and safety assessments* D-*6*

g. Make casework contacts D-6
h. Focus on solutions D-6
i. Offer needed services D-7
3. Closing a FAR report D-7
E. Safety and risk assessments E-1
1. Initial safety assessment in FAR E-1
2. Individual contacts E-1
3. CPS history review E-3
4. Conducting the initial safety assessment E-3
5. Documentation of the initial safety assessment E-4
6. Ongoing safety assessments E-4
7. Risk assessment E-5
F. Documenting FAR activities F-1
G. Changing to investigation track after seven days G-1
H. Addressing a subsequent report for an open FAR case H-1
1. Subsequent report assigned to CPS investigative track H-1
2. Subsequent report assigned to the FAR track H-1
I. FAR administrative requirements I-1
1. Education and training of workers I-1
2. Supervision I-1
3. Case assignments I-1
4. Contracting for FAR activities I-1
J. Confidentiality provisions J-1
1. Entities with access to FAR records J-1
2. Court access to FAR records J-1
3. Law enforcement J-2
4. Mandated reporters J-2
5. Re-disclosure of FAR information J-2
K. Hearings and expungements K-1

Chapter 5: **Family Assessment Response (FAR)**

A. Introduction to Family Assessment Response (FAR)

To allow for a more flexible response to families reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR), New York State enacted a law authorizing a dual track child protective system [SSL §427-a]. The law prescribes the broad parameters of Family Assessment Response (FAR) and allows local departments of social services (LDSSs) that are authorized to establish a FAR program considerable flexibility to develop approaches that best match local resources, staffing capacity, and needs of families.

The law excludes reports containing allegations of sexual abuse, physical abuse, severe or repeated abuse, abandonment, and failure to thrive from consideration for FAR [SSL §427-a(3)(a)-(i)]. It also requires an initial assessment of child safety, and if a child is deemed unsafe, the report may not be handled using FAR [SSL §427-a(4)(c)]. LDSSs can opt to impose more restrictive eligibility criteria for assignment to FAR than those required by the statute [SSL §427-a(3), 18 NYCRR 432.13(b)(4)(ii)].

The law requires that the following basic activities and services be included in the FAR approach:

- Notice to the family of the intent to use FAR rather than a traditional CPS investigation
- An examination, with the family, of the family's strengths, concerns and needs
- Planning and provision of services, including case management where appropriate, that are responsive to the needs of the family and supportive of family stabilization
- A joint evaluation and assessment of the family's progress including ongoing, periodic assessments of safety and risk to the child [SSL §427-a(4)(d)(v)]

While the nature and intensity of services offered, staffing and supervisory structure, and collaboration with community partners can vary across participating LDSSs, all FAR programs incorporate the same basic principles and key practices:

- Families are treated as partners and are approached in a solution focused manner, such as calling parents to arrange a time to meet with the family instead of making an unannounced home visit or seeing the children at school without parental knowledge.
- In FAR, the LDSS aims to gain a holistic understanding of the family's functioning through a comprehensive assessment of safety, risk, strengths, and needs. There is no formal determination of whether child maltreatment occurred.
- Families lead the process of identifying needs, and appropriate resources and services, both formal and informal, that they feel will best meet their needs.

There is no "one size fits all" approach to families who come into contact with Child Protective Services (CPS). Instead, the type and intensity of the CPS response is based on the presence of imminent danger to the child, the level of future risk of child maltreatment, and the family's strengths and needs, thus offering a continuum of response appropriate to each family's unique situation. The LDSS caseworkers responsible for delivering FAR are trained in "solution-focused" practice techniques to engage family members in crafting and implementing solutions to any child safety or well-being concerns.

FAR started as a pilot program in 2007 and was made a permanent part of CPS in 2011. In 2014, New York State issued regulations that provide specific requirements for FAR [18 NYCRR 432.13]. The specific laws and regulations applicable to the FAR track are noted throughout this chapter.

1. Definition and description of FAR

FAR is defined in state regulation as an alternative child protective response to reports of child abuse and maltreatment in which no formal determination is made as to whether a child was abused or maltreated and is based on principles of family involvement and support consistent with maintaining the safety of the child. In FAR, the family and CPS jointly participate in a comprehensive assessment of the family's strengths, concerns, and needs, and plan for the provision of services that are responsive to the family's needs and promote family stabilization, for the purpose of reducing risks to children in the family [18 NYCRR 432.13(a)(1)].

CPS collaborates with families assigned to FAR to maintain the safety and well-being of children. The parents or persons legally responsible for the child (PLRs) participate voluntarily with CPS to assess the family's strengths, address any concerns, and plan for the provision of services that are responsive to the needs of the family and promotes their ongoing well-being.

An initial safety assessment is conducted to establish that each child is safe in their home followed by continuous assessments of safety and risk throughout the case; However; there is no investigation of specific allegations of abuse or maltreatment, and no determination of "indicated" or "unfounded" [18 NYCRR 432.13(a)(1)].

Instead, the objective of FAR is to reduce the risk to children by a using a family-centered, family-led approach to effectively engage families in assessing their needs and strengths. FAR focuses on finding solutions to the family's needs instead of conducting a formal investigation and making a determination that a caregiver should or should not be substantiated for maltreatment. Respect for the family and collaboration with them are the foundations of FAR. The LDSS and the family jointly decide how to reduce future risk for children in the family by identifying the family's needs, strengths, and formal and informal resources.

2. Requirements for LDSS participation

An LDSS seeking to implement FAR must submit an application to OCFS, in which the LDSS must describe its plan for implementing its dual response.[1] OCFS must approve the LDSS's plan before the LDSS can implement FAR [SSL §427-a(2); 18 NYCRR 432.13(b)].

FAR is a CPS response; therefore, an LDSS staff addressing reports made to the SCR and assigned to FAR must be included within the LDSS' CPS unit. The only exception to this requirement is when an LDSS receives approval from OCFS to contract with a community agency to conduct some FAR duties [18 NYCRR 432.13(f)(3)]. However, when such a contractual program is approved, the LDSS CPS unit is still solely responsible for conducting the initial seven-day safety assessment and CPS must maintain overall responsibility for every case assigned to the FAR track [18 NYCRR 432.13(d)(2), 432.13(d)(4), 432.13(f)(3)(iv)(a)-(c)]. See **Section I.4**, *Contracting for FAR activities,* of this chapter for information about contracting with a community-based agency to conduct FAR work.

Any representative of an LDSS who engages in FAR must complete the CPS training required for all CPS staff in the state [SSL §421(5)(a)-(c); 18 NYCRR 432.13(f)(1)(ii)]. In addition, LDSS representatives may not be assigned responsibility for a FAR case before completing training on the Process and Practice of FAR, and they must complete additional FAR training within a timeframe specified by OCFS [18 NYCRR 432.13(f)(1)(ii)(b)].

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[1] A blank FAR Application can be found at: http://ocfs.state.nyenet/FAR/CPS/FAR%20Application%20Template.asp. This website is accessible to child welfare workers in New York State, but is not accessible to the public

B. Reports eligible for FAR

Although FAR is intended to give CPS the flexibility necessary to tailor its response to the unique needs of each family, there are general restrictions on its use and certain reports are prohibited from being assigned to the FAR track.

- CPS may only use FAR for familial reports. FAR cannot be used where there is a foster boarding home or where abuse or maltreatment allegedly occurred during the provision of child day care [SSL §427-a(1)].
- FAR may only be used in cases where children are not in immediate or impending danger of serious harm [SSL §427-a(4)(c); 18 NYCRR 432.13(d)]. It may only be used to address reports containing allegations of maltreatment, and may not be used for abuse allegations.
- FAR can only be used by an LDSS that has been authorized by OCFS [SSL §427-a(2); 18 NYCRR 432.13(b)(1)].
- FAR can only be used for reports that are assigned to the FAR track in CONNECTIONS (CONNX) [18 NYCRR 432.13(c)].

1. Restrictions on assigning reports to FAR

a. *Foster care and day care*

CPS may not assign reports coded “foster care” (**FC**) or “day care” (**DC**) to the FAR track; all such reports must be assigned to the Investigation track.

In addition, reports involving foster parents must be assigned to the CPS investigative track, even if the report is coded as “**Familial**.” If the subject of the report is a certified or approved foster parent, CPS must address the report with an investigation, even if the report involves the foster parent’s own children (biological or adopted).

b. *Child day care*

It is permissible to assign a report to FAR when the subject of the report is a child day care provider and the report is coded as **Familial**, provided the alleged maltreatment did *not* occur during the provision of child day care services. See **Chapter 7**, *Investigations in foster homes and child day care programs*, of this manual for more detailed information about addressing reports coded as **FC** or **DC.**

When deciding whether to assign a report to FAR where the subject is a child day care provider, CPS staff should consider the legal requirements for confidentiality applicable to FAR (described in **Section J,** *Confidentiality provisions,* of this chapter) CPS may not inform the supervising agency of a child day care program about a FAR report regarding a child care provider.

2. Allegations ineligible for FAR

State law prohibits assigning a report to FAR when the subject is alleged to have:

- Committed a sex offense defined in Article 130 of the Penal Law
- Allowed, permitted, or encouraged a child to engage in any act of prostitution or promoted prostitution of a child
- Committed an act of incest
- Allowed a child to engage in acts of sexual performance or sexual conduct

- Committed assault against a child
- Committed or attempted to commit manslaughter in the first or second degree
- Abandoned a child
- Subjected a child to severe or repeated abuse
- Neglected a child to the extent that it substantially endangers the child's physical or mental health, which may be referred to as a failure to thrive that has been diagnosed by a physician and is due to parental neglect [SSL §427-a(3)(i)].

CPS may not assign to FAR any report that involves a child fatality. All such reports must receive a CPS investigation [18 NYCRR 432.13(b)(4)(ii)(b)].

3. LDSS criteria for FAR inclusion

Each CPS participating in FAR may establish its own criteria concerning the types of reports it will accept for FAR track assignment, within the restrictions set by state law [SSL §427-a(3)].

When an LDSS submits its FAR application to OCFS, it must provide its screening criteria, which specify the types of allegations that the LDSS will and will not accept for assignment to FAR. To establish a robust FAR program, CPS's screening criteria for FAR should include a broad spectrum of cases encompassing a significant percentage of the LDSS' CPS reports. As an LDSS becomes more familiar with FAR, it may expand or otherwise adapt its screening criteria, but all changes must be approved by OCFS [18 NYCRR 432.13(b)(4)(ii)].

a. *Allegations eligible for FAR*

State law does not provide a list of allegations that are eligible for FAR; instead, it lists the types of allegations that *cannot* be assigned to FAR. Therefore, the allegations eligible for FAR assignment are, by inference, all other allegations. These include:

- Inadequate guardianship
- Lack of supervision
- Lack of food, clothing, shelter
- Medical neglect
- Educational neglect
- Lacerations, bruises, welts
- Excessive corporal punishment that does not rise to the level of abuse
- Failure to provide at least a minimum level of care for children due to the misuse of alcohol or drugs

b. *Using FAR for court-ordered investigations*

Nothing in the FAR statute prohibits the use of FAR in a court-ordered investigation (COI). A COI may be addressed with FAR, however, only if CPS and the Family Court agree to it. In order to use FAR for a COI, the court must comply with statutory limitations on its access to FAR information in the following manner:

- Information from an open FAR case (including a COI) may only be shared with a court when the court finds that the information is necessary for the determination of a matter before the court [SSL §427-a(5)(d)(vi); 18 NYCRR 432.13(g)(2)(vi)]. Thus,

the court order for the COI should include a finding that the court requires this information to determine the issue prompted the court to issue the COI.

- A court may issue an order to obtain information from an open FAR case only after providing notice to the subject of the report and all parties to the proceeding and giving them an opportunity to be heard on whether such an order should be issued. Thus, before a court issues an order for a COI and permits the LDSS to assign the case to FAR, the court must notify the parties in advance and give the parties an opportunity to be heard on the matter [SSL §427-a(5)(d)(vi); 18 NYCRR 432.13(g)(2)(vi)].
- As a practical matter, the court can seek consent from parties involved in the FAR process for information obtained by the LDSS to be submitted as part of the COI, and allow them to be heard on the matter. Once the order is issued, the LDSS would then have to complete its report and submit it to the court prior to closing the FAR case. FAR information cannot be shared with a court after a FAR case is closed.
- Courts may not directly access information contained in closed FAR reports for a COI or any other purpose [SSL §427-a(5)(d)(vi); 18 NYCRR 432.13(g)(4)]. However, there are limited circumstances in which a court may see information from closed FAR reports (see **Section J.3**, *Law Enforcement,* of this chapter).

C. Determining the appropriate track assignment

It is the sole responsibility of the LDSS to decide on the appropriate track assignment of a new report from the SCR [SSL §427-a(4)(b); 18 NYCRR 432.13(c)(2)].

When a CPS using FAR receives a new report, it uses the same intake procedures as it uses for all reports, except staff must decide whether to initially assign the report to FAR or to investigation. A thorough and consistent screening process is essential for maintaining the effectiveness and efficiency of both the family assessment and investigative response pathways. It is important that an LDSS strives to select the most appropriate track for each report upon its receipt from the SCR.

CPS can change the track designation of a report in CONNX only once, and can make that change only within the first seven days after receiving the report [SSL §427-a(4)(c); 18 NYCRR 432.13(c)(4)].

Each CPS that uses FAR must have a written protocol for its staff to follow when determining whether to assign a new report to the investigative or FAR track [SSL §427-a(2)(a); 18 NYCRR 432.13(b)(4)(iii)]. The protocol must:

- Specify the types of allegations and situations (e.g., domestic violence) that the CPS will or will not consider for potential assignment to FAR;
- Designate the staff responsible for determining the initial track assignments for new reports from the SCR; and
- Describe how, if at all, the CPS will screen reports received during on-call hours for potential assignment to FAR.

The goal of the protocol is to protect the safety of children and provide for the appropriate track assignment.

1. Initial track assignment

When a new report is received from the SCR, staff uses the LDSS screening protocol to:

- Determine whether the report is eligible for the FAR track
- Decide if the report will be assigned to the CPS investigation or CPS FAR track
- Enter the initial track assignment into CONNX

When a report is eligible for FAR, CPS may use its discretion in making the initial assignment to either FAR or investigation. The decision may also be based upon prior knowledge of the family, previous CPS history, staff availability, or other factors.

Establishing a collaborative relationship

If CPS is undecided as to whether a FAR-eligible report should initially be assigned to FAR or CPS investigation, it is usually best practice to initially assign the report to FAR. Using FAR from the beginning can be crucial in establishing the foundation for the cooperative relationship necessary for FAR to be successful. It may not be possible to establish a collaborative relationship later in the process.

a. *Informing the family about FAR*

When a report is initially assigned to the FAR track, the LDSS must provide each parent, guardian, or PLR for the child named in the report with information about FAR and how it compares to the CPS investigations. This information enables the family to make an informed decision about voluntarily participating in FAR. The LDSS must inform the family that the individuals who will be working with the family in either track are mandated reporters who are required to report suspected child abuse or maltreatment, should this become a concern [SSL §427-a(4)(d)(i); 18 NYCRR 432.13(c)(3),432.13 (e)(2)(i)]. See **Section D.2.a** of this chapter, *Provide information and written notification to the family about FAR,*

b. *Changing the initial track assignment*

If the family prefers an investigation rather than FAR, or if a child is found to be unsafe in the home during the seven-day safety assessment, the report must be moved to the investigative track in CONNX no later than seven days after receipt of the report [SSL §427-a(4)(c); 18 NYCRR 432.13(c)(4)(iii)].

After the initial assignment of a report to either FAR or investigation, the LDSS can *change the track assignment in CONNX* from FAR to Investigation, or from Investigation to FAR only one time. The change can be made only during the seven days after the report was made [SSL §427-a(4)(c); 18 NYCRR 432.13(c)(4)]. Because a track switch can be made only once, it is important that CPS make an accurate initial track assignment. Whenever a track change is made, the LDSS must document the reason for the change in progress notes [SSL §427-a(4)(c); 18 NYCRR 432.13(c)(4)(i)]. All case record documentation remains in the record when the track is changed.

2. Finalizing the track assignment

Prior to finalizing the FAR track assignment, the LDSS must decide if assignment to FAR supports the needs of the family and safety of children. This entails reviewing all previous CPS history, meeting with all adults and children in the family and with other contacts, as appropriate, and completing a thorough initial seven-day safety assessment, using the same safety assessment instrument in CONNX as is used with an investigation [18 NYCRR 432.13(c)(4)(iii)].

a. *Conditions necessary to finalize assignment to FAR track*

To finalize the assignment of a report to the FAR track, *all* of the following conditions must apply**:**

- **Compliance with state- and locally-designated screening criteria**

  Allegations in the report must comply with all state and local exclusions. If a CPS report is initially assigned to the FAR track, and CPS decides during its initial safety assessment that conditions not described in the initial allegations make the report ineligible for FAR, CPS must re-assign the report to the investigative track.

- **Finding that children are safe in their homes**

  The initial seven-day safety assessment must include a determination that each child named in the CPS report or known to be living in the household is safe in the home. In operative terms, this means that there is a safety decision of “1” or “2” in the initial safety assessment. If the safety decision score is “3” or higher, the report cannot be assigned to FAR. See **Section C.1** of this chapter, *Initial track assignment* for specific information about the seven-day safety assessment.

Safety Decision 1: No safety factors were identified at this time. Based on currently available information, there are no child(ren) likely to be in immediate or impending danger of serious harm. No safety plan/controlling interventions are necessary at this time.

Safety Decision 2: Safety factors exists, but do not rise to the level of immediate or impending danger of serious harm. No safety plan/controlling interventions are necessary at this time. However, identified safety factors have been/will be addressed with the parent(s)/caretaker(s) and reassessed.

- **Satisfactory record review**

  CPS must review all previous SCR records and any additional case records the LDSS may have pertaining to members of the family. CPS assess if previous records indicate whether FAR would be an appropriate response to the current report.

- **No open CPS investigations**

  If there is still an open investigation involving the family, the new report cannot be assigned to FAR. However, if there is an open FAR case, a new report should be assigned to the same FAR case, provided that the new report meets the FAR inclusion criteria.

- **Agreement by parents, guardians, and persons legally responsible (PLR)**

  Participation in FAR is voluntary; a family cannot be compelled to choose FAR. The family must agree to participate in FAR and demonstrate their willingness to cooperate in completing a family assessment. The FAR track cannot be successful without family cooperation and participation. [18 NYCRR 432.13(c)(4)(iii)(d)].

Relevance of the number of previous reports

The number of previous reports or previous indications should not be the sole factor in determining whether a new report should be assigned to or excluded from FAR. CPS should assess whether FAR is likely to be a safe and successful approach in helping the family address any underlying problems. In some cases, the existence of numerous previous reports may be an indicator that the previous approach has not been successful in addressing the family's needs and that a different approach may be warranted.

3. When parents disagree about FAR participation

In some cases, parents, guardians, or the persons legally responsible for the child disagree with each other about participating in FAR. This can occur where there are different living situations, some of which may affect the nature of the work that would be done in FAR – whether parents live in the same home or in separate homes, whether one parent has sole physical custody or both have custody, and whether one parent or both parent(s) are named as subjects. There may also be conflicts regarding FAR participation in situations in which there is domestic violence or where one parent wants to use the report to control or hurt the other parent.

When a report is eligible for FAR, a disagreement between caretakers about whether to participate in FAR does not automatically preclude CPS from offering FAR as an option [18 NYCRR 432.13(c)(4)(iii)(d)(2)]. It may be acceptable to proceed with FAR with the consent of only one parent, *if two conditions exist*:

1. There must be one parent *who is a subject of the report* and who consents to participate in FAR; *and*
2. CPS must believe there is a reasonable possibility that FAR can achieve positive results for the family and child.

The report may be assigned to FAR:

- Whether or not the non-consenting parent is named as a subject
- Whether or not the consenting parent lives with the child
- Whether or not the consenting parent has physical custody of the child

If CPS does not believe FAR is likely to achieve a positive result, then the report should not be assigned to FAR. This is especially important for situations in which there is an unwilling family member. It may be legally permissible to assign the report to FAR, but if there is no realistic possibility of FAR actually assisting the family, then FAR should not be used.

If the only consenting parent is not a subject in the report, the case cannot be assigned to FAR.

4. Time limit for final track assignment

After gathering enough information to complete the initial safety assessment, CPS, in consultation with a CPS supervisor, must make a final decision regarding the track assignment.

The decision of whether the report should continue to be addressed with FAR or be assigned to the CPS investigative track must be made no later than seven days after receipt of a report from the SCR [SSL 427-a(4)(c) 18 NYCRR 432.13(c)(4)]. Neither CPS nor the SCR can change the track assignment after seven days. Changing the track designation after the seventh day requires closing the report and calling in a new report to the SCR.

5. Documenting the rationale for the track assignment

After CPS completes the initial seven-day safety assessment and decides on the final track assignment for a new report, CPS must document the reasons for the final track assignment choice in the Comments section of the seven-day safety assessment. This applies to each report that is:

- Permanently assigned to FAR; or
- Initially assigned to FAR but subsequently assigned to the investigative track.

All information entered in the case record before the track assignment becomes permanent remains in the case record, irrespective of whether the track assignment is changed during the first seven days and irrespective of whether the report was first assigned to the FAR track or investigative track [18 NYCRR 432.13(c)(4), 432.13(d)(3)].

D. Conducting the family assessment

As soon as a report is assigned to the FAR track, the LDSS should apply FAR principles in their work with the family and continue to do so until the report is either reassigned to the CPS investigative track or closed [18 NYCRR 432.13(e)(1)].

Family engagement and respect are core values of FAR. To engage a family, the LDSS must motivate and empower family members to recognize their strengths, needs, and resources, and to take an active role in ensuring the safety and well-being of their children and minimizing the future risk of harm.

1. Initial contact with the family

The LDSS should be respectful and cooperative from the very first contact with the family. It is important to begin contact in a manner that is consistent with the respectful, family-led paradigm that is essential to FAR. The first contact sets the tone for future engagement and can affect the family's decision to participate in FAR and their willingness to cooperate in resolving the relevant issues.

The LDSS should always try to make the first contact with the family by telephone, and should request to meet face-to-face [18 NYCRR 432.13(d)(1)]. By requesting to meet, the LDSS has already begun working toward a collaborative partnership. Whether the first contact is over the telephone or in person, the LDSS must advise the parents or person legally responsible for the child that an SCR report has been made and inform the parents about the concerns that necessitated the agency's response. The LDSS must also explain FAR to the parents and inform them CPS would like to assign the case to the FAR track [18 NYCRR 432.13(c)(3), 432.13(e)(2)]. If the first contact occurs by telephone, the LDSS should provide sufficient information without overwhelming the parents.

> ***Meeting with a child before meeting with the parent***
>
> On rare occasions, it may be necessary for the LDSS to talk to a child at school without first obtaining the parent's permission and prior to scheduling the first meeting with the parent. For example, a report is received alleging inadequate guardianship. It is freezing cold and a 10-year old child arrived at school without a coat. The child is afraid to leave school, telling a teacher that sometimes he can't get into the house after school because his mom often forgets to leave a key and she has "been acting kind of weird" lately.
>
> In this case, the LDSS would first contact the source of the report to gather information regarding the child's safety status in the home. If more information was needed, the LDSS would then try to contact the parent. If unable to contact the parent, and still lacking enough information to assess immediate safety, it might be necessary for the LDSS to see the child in school to assess and address the current situation. In conversation with the child, the LDSS can try to get more information to locate the parent.

When scheduling the first face-to-face meeting, it is recommended that the LDSS ask the parent or person legally responsible for the care of the children to have all family members present. However, if there are any concerns related to domestic violence, it is advisable to have separate initial meetings. The LDSS should also advise the parent that a trusted friend or relative may be invited to be present for the visit. For more information on Domestic Violence, refer to Chapter

6, Section N. The LDSS should go the family's home without scheduling an initial meeting only if the LDSS is unable to verify within 24 hours that the children are safe in the home. If the LDSS arrives unannounced and can determine the children are not in immediate or impending danger of serious harm, the LDSS should make an appointment to return at a time that is convenient for the family.

The LDSS should avoid conferring with the child(ren) before meeting with the parent. Whenever possible, the LDSS should try to see the child in the home with the parent present.

When the LDSS cannot immediately verify a child's safety and cannot reach a parent to obtain permission, the LDSS should meet with the child. During the first contact with the parent, whether by phone or in person, the LDSS should explain why it was necessary to see the child without the parent's permission and should express regret at not being able to set up the meeting through the parent. The worker should be empathetic and express respect for the parent's role. The LDSS may be able to build rapport with the parent by being honest and demonstrating respect.

Techniques for facilitating dialogue

When gathering information to assess safety, strengths, family functioning, and the family's need for services, The LDSS should use a variety of tools and techniques to elicit the family's thoughts and encourage each family member to participate in conversations.

LDSS representatives engaged in FAR may utilize solution-focused practice techniques such as "Three Houses" and "Wizard and Fairy." These tools and others like them can be especially helpful with young children who find it hard to understand abstract concepts like safety. FAR training offers several techniques that can be used to assist children in expressing their feelings, concerns, and hopes for their family.

The effective use of solution-focused tools and techniques during contacts with the family assists in the assessment of safety, current well-being, risk, and in identifying protective factors with the family. See **Chapter 14**, Appendix**, Section N**, for a description of several of the techniques used in FAR cases.

2. Required casework activities

a. *Provide information and written notification to the family about FAR*

CPS must provide the family with information about FAR to help family members make an informed decision about whether to accept assignment of the report to the FAR track. This information should be provided at the initial meeting with the family. Such information should include, but is not limited to:

- A verbal description of FAR and how voluntary participation in FAR is different from being the subject in a CPS investigation, including that a FAR report does not result in a determination. The LDSS should emphasize the importance of ongoing collaboration and provide information about the confidentiality of FAR records [18 NYCRR 432.13(e)(2)(ii)(a)-(c)].
- An explanation that all LDSS representatives, either providing the FAR response, or conducting a CPS investigation, are mandated reporters who are required to report reasonable suspicions of abuse or maltreatment [SSL §427-a(4)(d)(i); 18 NYCRR 432.13(e)(2)(i)(b)]

- An explanation that agreeing to FAR is voluntary and the parents have a choice to participate in FAR or have their case assigned to the CPS investigative track [18 NYCRR 432.13(e)(2)(ii)(d)]

No later than seven days after receiving a report that has been assigned to the FAR track, CPS must provide written notification of the report to every parent, guardian, or person legally responsible for the care of the children named in the report. Written notice of the report may not be given to any other persons [18 NYCRR 432.13(e)(2)(i)]. A "Notice of Existence for FAR Cases" is located in CONNX, in both English and Spanish. The LDSS must be careful not to use the "Notice of Existence for CPS Investigations." f a prospective recipient of a Notice of Existence for FAR Cases has Limited English Proficiency, CPS must use the appropriate language services.

While all parents, including non-custodial and out-of-household parents, are entitled to receive notification of the existence of a FAR report, there is no legal requirement to further involve them in the FAR intervention. If there is a subsequent report during an open FAR case, CPS/FAR must verbally notify the participating parent(s) about the subsequent report [18 NYCRR 432.13(e)(2)(i)(d)]. The LDSS is not required to provide written notification of a consolidated subsequent report unless the parent requests it.

b. *Obtain the family's consent to use FAR*

When engaging with a family to address the concerns of an SCR report, they must consent to the use of FAR. Verbal consent is sufficient and must be documented by the LDSS in CONNX. If the parents or caretakers do not consent to FAR and choose to have the report assigned to the CPS investigative track, the LDSS must honor that choice.

To participate in FAR, the family must agree to actively engage in ongoing meetings and discussions that are necessary to identify the family's strengths and needs. Additionally, the family must agree to participate in developing effective strategies to address any current concerns and identified risks to the children in the home [18 NYCRR 432.13(c)(4)(iii)(d)(1)].

Refer to **Section C.3**, *When parents disagree about FAR participation,* of this chapter for information about what to do when parents disagree with each other about whether to participate in FAR.

c. *Complete the seven-day safety assessment*

Information about conducting the seven-day safety assessment and its essential role in FAR is in **Section D.2.c**, *Complete the seven-day safety assessment,* of this chapter.

d. *Engage the family*

Immediately upon the initial assignment of a report to the FAR track, the LDSS must work in partnership with the family participating in FAR [18 NYCRR 432.13(e)(2)(iii)]. The LDSS should be transparent with families regarding all actions that they take concerning the case. To the extent feasible, the LDSS should include all family members in discussions, including children who are old enough to express thoughts and opinions. The LDDSS should encourage the family to include other persons who might be a resource, or can provide support for them, such as members of their extended family, clergy, close friends, etc.

In FAR, the focus is on gaining a holistic understanding of the family's functioning. This is done through a comprehensive assessment of safety, risk, strengths, and needs—drawing from the knowledge of those who know the family best. The LDSS views and engages with

parents as partners in maintaining child safety, encouraging families to seek help when they need it. The FAR experience of engaging in a collaborative partnership may increase the family's trust in the child welfare system. Approaching FAR families in a collaborative manner may make them more receptive to actively engaging in needs and strengths assessments, problem solving, and services, if needed.

Engaging absent parents

When a parent is absent from a child's life, the LDSS should initiate a discussion with the participating parent about the other parent's absence, and explore with the parent whether the absent parent could provide a positive contribution in the child's life and well-being. Efforts should be made to determine if the absent parent should be included in the FAR process, when appropriate.

Although the law states that each parent, which would include non-custodial or out-of-household parents, must be notified of the existence of a FAR report [SSL §427-a(4)(d)(i)], there is no legal requirement to further involve them in the FAR process. The decision about including non-custodial parents or parents who live in another household should be based on the circumstances of the case, including the comfort of the subject parent or child, the presence of domestic violence, the current role and potential role of the absent parent, and any other circumstances particular to the case.

For information about cases where domestic violence is present, see **Chapter 6**, **Section J,** *Confidentiality provisions*.

e. *Complete at least one Family-Led Assessment Guide (FLAG)*

The LDSS must engage the family in a joint examination of current matters of concern, and identify the family's strengths, risks, and needs. The LDSS must use the Family-Led Assessment Guide (FLAG), as specified by OCFS, to document at least one such formal assessment for each FAR case [18 NYCRR 432.13(e)(2)(iv)]. The FLAG is also used to help plan with the family any services or assistance that might be helpful in reducing risk and increasing protective factors. The LDSS should collaborate with the family to complete the FLAG, not just provide the document to the family to complete on their own. Obtaining and discussing assessment information directly from the family, including children, is a key component of FAR.

The family-led assessment to complete the FLAG should be initiated as soon as possible, but at the latest no more than 30 days after receipt of the report [18 NYCRR 432.13(e)(2)(iv)]. The LDSS must complete at least one FLAG in CONNX before the case can be closed [18 NYCRR 432.13(e)(2)(iv)], but may complete multiple FLAGs. If the family's composition or situation changes dramatically, the LDSS should revise the FLAG or create a new one. In instances in which children live in two households that have different issues, best practice would be to conduct a separate FLAG for each home. Any additional or revised versions of the FLAG should be documented in CONNX.

The LDSS and the family should agree on a rating for each of the items in the FLAG. Each FLAG item has its own set of four rating definitions. The FLAG ratings correspond to action levels, as outlined below:

0 = a clear strength
1 = no need for service action, opportunities for strength building
2 = a need for services (or, for items with Service Status included, services were being received before the FAR case)
3 = a need for immediate or intensive service action
NA = not applicable or not assessed

The factors addressed in the FLAG, listed by topic category, are:

The Family Together

- Housing Stability
- Physical Condition of the Home
- Financial Resources and Self-Sufficiency
- Relationships Among Siblings
- Communication and Conflict Resolution between Parents and Parents and Child
- Continuity of Care

Children

- Child's Relationship with Parents
- The Child's Health Status, including Medical and Dental Care
- Child's Education and Status of Educational Services
- Child's Developmental and Service Status
- Child's Interpersonal Skills and Service Status
- Child's High Risk Behaviors and Service Status
- Child's Mental Health and Service Status (including substance use or abuse)

Caregivers

- Primary Caregiver's Partner Relationship
- Caregiver's Vocational Functioning
- Caregiver's Mental Health and Service Status
- Caregiver's Alcohol and/or Drug Use and Service Status
- Caregiver's Supervision of Children
- Caregiver's Boundaries and Developmentally Appropriate Expectations of Children
- Caregiver's Disciplinary Practices with Children

Caregiver's Advocacy Status

- Caregiver's Knowledge and Attention to Family/Child Needs and Service Status

- Caregiver's Natural Supports[2]
- Caregiver's Problem Solving Ability
- Caregiver's Knowledge of Service Options and Ability to Access Services

The rating produced by completing the FLAG is *not* a rating of the risk of future abuse or maltreatment like that obtained from the Risk Assessment Profile (RAP). The FLAG is used to rate the family's strengths and needs. It acts as a catalyst for the family and the LDSS to consider and discuss the family's situation.

f. *Conduct ongoing risk and safety assessments*

The LDSS must engage with the family in an ongoing joint evaluation and assessment of the family's progress, including making periodic assessments of risk to the child [18 NYCRR 432.13(e)(2)(v)].

The LDSS should be open and transparent with the family regarding the need for ongoing safety and risk assessments. They should use tools such as exception questions, which are taught in FAR training, to help the family identify what they already do or have done in the past to provide for their children's safety. This can help clarify how to plan to address any concerns regarding child well-being and reduce future risk for the children. The ongoing process of assessing safety includes gathering specific information from conversations, observing the family's interactions and functioning and reviewing known family history, with the goal of identifying the presence or absence of safety factors.

The LDSS must document assessments of risk in progress notes throughout the case [18 NYCRR 432.13(e)(5)(vi)].

g. *Make casework contacts*

The number of casework contacts in a FAR case must be commensurate with the requirements for completing family assessments and for meeting the needs of the family. There are no specific casework contact requirements for FAR, unless the case is open for more than 90 days (see **Section I.2** of this chapter, *Supervision*) [18 NYCRR 432.13(e)(4)]. It is expected, however, that there will be several visits with the family, including with all children who are able to participate in discussions aimed at identifying and assessing needs, strengths, and solutions.

h. *Focus on solutions*

When the LDSS and the family identify challenges to the family's ability to support the well-being of their children or meet their needs, the LDSS must offer to work jointly with the family to identify, develop, and implement solutions [18 NYCRR 432.13(e)(2)(vi)]. All family members should be included in this planning, to the extent feasible, and the family should be encouraged to include extended family or other people who may be helpful in the process.

Solutions are different than services and more than referrals. For example, implementing a solution might entail using natural, informal supports, such as extended family members, clergy, or neighbors, as resources. The LDSS should work with the family to explore and identify both formal and informal supports.

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[2] Natural supports are sources of help for the family that are not purchased services. This could include friends and extended family, a church, or other organization that can be relied on to provide useful help and support in times of need.

The LDSS should concentrate on the parents' ability to respond to any concerns facing their family or children. The LDSS should probe for concrete examples of how the family has faced similar risks in the past and what, if anything, is different now. When needs have been identified, the LDSS should ask family members solution-focused questions regarding what may improve their current situation. By working with the family to identify its strengths, the LDSS can assist a family in building a foundation that will support them long after the FAR case is closed.

i. *Offer needed services*

Where appropriate, the LDSS must offer assistance to the family in implementing solutions to their identified needs that are supportive of family functioning, meet the children's and parents' needs, and reduce risk to children in the family. Assistance may include providing information on services and supports available in their community, building supportive networks with extended family and community resources, advocating for the family with schools, landlords, and others, referring the family to government and privately funded programs, contacting service providers; and paying for goods (e.g., a new car seat) or services (e.g., bus tokens).

- A FAR client does *not* need to complete or sign an Application for Services to receive services under FAR, as is required to receive Preventive Services.
- Districts may use child protective, wraparound, or other funding sources to pay for goods and services provided through FAR.
- The acceptance of services or goods by families who are receiving FAR is voluntary. A family receiving FAR cannot be required to accept services [18 NYCRR 432.13(e)(2)(vii)(c)].

3. Closing a FAR report

The LDSS must remain aware that FAR is intended to be a short-term protective service. FAR reports should usually be closed within 60 days, but can be open for 90 days under limited circumstances (i.e., the LDSS is assisting the family with a specific need). If the family needs services that cannot be provided within 90 days, the LDSS may open a preventive services case if the family is eligible and provides consent [18 NYCRR 432.13(e)(3)(v)(a)-(c)].

In extremely limited circumstances, a FAR report may be open over 90 days. This requires the LDSS to document the reason for keeping the report open, including specific goals and steps to attain those goals. The LDSS must also meet with the family at least once every two weeks and document each contact [18 NYCRR 432.13(e)(3)(v)(d)(1)-(2)].

The decision to close the case must be made in conjunction with the family, whenever possible. The case should be closed if the family and the LDSS agree that the family is providing adequate care for their children, the children are safe, and the family has no requests for services or supports [18 NYCRR 432.13(e)(3)(i)-(ii)].

If ongoing needs have been identified, the family should be given information regarding available resources in their community. The LDSS should offer to join the family when they are meeting with a new service provider for the first time [18 NYCRR 432.13(e)(3)(iii)]. It is important for the LDSS to assist the family as they transition to working with new service providers. This process, referred to as a "warm handoff", allows the LDSS to ease the transition to a new service provider and advise the new provider of the family's past progress and existing needs, and facilitate communications with the new service provider so the family is aware of what will happen next.

The LDSS may believe a family needs additional services, but they may decline to accept further assistance. If the LDSS is not aware of any current maltreatment or immediate danger of serious harm, the FAR case must nevertheless be closed [18 NYCRR 432.13(e)(3)(iv)].

The LDSS must notify the parents their report has been closed within seven days after closure [18 NYCRR 432.13(e)(2)(viii)]. There are notification letters in CONNX that are specific to FAR that may be used for this purpose.

While the LDSS must mail or hand-deliver a written notification, it is suggested that the LDSS engage in a discussion with the family as well. The written notice must inform the family and subjects that the FAR report is legally sealed and will be maintained for 10 years from the date the report was received by the SCR. The written notice must also inform the parents of the confidentiality provisions applicable to FAR records and that they have a right to access their own FAR records [18 NYCRR 432.13(e)(2)(viii)].

E. Safety and risk assessments

The term **Safety** refers to whether there is immediate or impending danger of serious harm to a child's life or health as a result of acts of commission or omission (actions or inactions) by the child's parents, guardians, or persons legally responsible for the care of the child.

The term **Risk** refers to the probability that a child will be subjected to future abuse or maltreatment.

The purpose of a risk assessment in FAR is to identify the family's need for services to decrease the likelihood of future abuse or maltreatment. While an actuarial risk assessment tool (the RAP) is used in investigations, it is not required in FAR.

Child safety is the priority of all child welfare responses. Both the investigative and FAR tracks are designed to enable CPS to identify safety factors and assess risk, and to work with the family to increase safety and reduce risk. The specific method used in FAR, however, is to assess with the family what, if any, unmet needs are having a negative effect on the children's safety and well-being. Should there be unmet needs, the family is supported in taking the lead in identifying the resources, supports, and services that would work best for them. The emphasis is on strengthening the family's informal support system through the engagement of extended family, friends, and other contacts in the community such as clergy or teachers so that current needs are met, and the family is also better prepared to meet future needs on their own.

1. Initial safety assessment in FAR

Although the purpose of every initial, seven-day safety assessment is to determine the current safety of children, the assessment has an additional use in FAR. In FAR, this assessment is also used to assess if the report is eligible to remain in the FAR track [SSL §427-a(4)(c); 18 NYCRR 432.13(d)]. CPS can confirm the assignment of a report to the FAR track only if the seven-day safety assessment contains a finding that no child in the home is in immediate or impending danger of serious harm (see **Section D** of this chapter, *Conducting the family assessment*). CPS may also decide, based on the initial safety assessment, to change the assignment of a report from investigation to FAR, if the report is otherwise eligible for FAR.

The seven-day safety assessment must be conducted by the LDSS [18 NYCRR 432.13(d)]. Although the LDSS may, with OCFS approval, contract with a community-based agency to perform some FAR duties [18 NYCRR 432.13(f)(3)], a community-based agency employee may not conduct the seven-day safety assessment.

The LDSS must initiate an assessment of safety for a report assigned to the FAR track within 24 hours of receiving the report [SSL §427-a(4)(c); 18 NYCRR 432.13(d)]. A report may not be assigned to FAR if it contains allegations suggesting immediate or impending danger of serious harm to children. The LDSS *must* confirm, however, that the children are not in immediate or impending danger. This is done by reviewing the report, reviewing any prior CPS history the family may have, and contacting the source, the family, and/or collateral contacts [18 NYCRR 432.13(d)(1)].

2. Individual contacts

Within the first 24 hours, the LDSS must establish face-to-face or telephone contact with one or more persons who can provide information regarding the current safety of the children named in the report. This contact starts the safety assessment and lays the groundwork for future FAR work, but the immediate task is for the LDSS to determine whether the individual contacted has

information indicating whether or not the children named in the report are currently safe and not in danger of immediate or impending serious harm.

The LDSS must try to contact one or more of the following people to obtain information on the current safety of children, and to discuss other information applicable to the case, as appropriate. All efforts to obtain this information must be documented in progress notes in CONNX.

Source of the report

Whenever possible, CPS should contact the source of the report before contacting the family. The source can confirm and possibly expand upon the details of the report and may be able to provide impressions of family functioning, strengths, and resources [18 NYCRR 432.13(d)(1)(i)]. CPS should use this interview to try to ascertain whether children in the family are currently safe. If the source does not offer that information without prompting, CPS should ask a direct question such as, "Do you believe that any of the children in the home are in immediate or impending danger of serious harm?" If the source does not know about the current safety of the children, CPS should ask the source if he or she can provide the name of another person who may have that information.

Subject(s) and other family members

Whenever possible, the initial contact with the subject(s) of the report should be by telephone. In the initial contact with the family, CPS should inform the subject(s) about the existence of concerns stated in the report, initiate the safety assessment and begin engaging the family in the FAR process. During the initial contact, the LDSS and the family schedule the first face-to-face-meeting [18 NYCRR 432.13(d)(1)(ii)].

If the LDSS has not been able to confirm through contact with the source or other contacts that children in the family are currently safe, and is unable to schedule a face-to-face appointment with the family within 24 hours of receipt of the report, the LDSS should ask the subject or other family member for the name and contact information of someone who might be able to confirm that children in the home are not in immediate or impending danger of serious harm. This contact could be a relative, neighbor, teacher, etc.

If the LDSS is unable to find anyone who can confirm that the children are currently safe, the LDSS may need to make an unannounced visit to the home within 24 hours or see the children in another venue. If this occurs, it is especially important that this initial contact with the family be conducted in a sensitive and non-confrontational manner consistent with the FAR approach (see **Section D.1** of this chapter, *Initial contact with the family*).

Collateral contacts

CPS should interview any other persons who may be able to provide information as to whether any child is in immediate or impending danger of serious harm [18 NYCRR 432.13(d)(1)(iii)]. However, except for determining whether the children are safe immediately after receiving a report, in a FAR case CPS should not routinely initiate contacts with collaterals without first discussing it with the family and obtaining their consent.

3. CPS history review

The LDSS is required to review all SCR records relevant to the family, including sealed reports.

Within one business day of the oral report date, the LDSS must review SCR records of all prior reports involving members of the family, including any previous FAR and unfounded reports that involve a subject, child, or child's sibling named in the current FAR report. If the review of the SCR records shows that there are any previous CPS cases (including FAR cases) that were investigated or addressed by the CPS of another LDSS, CPS must request relevant hardcopy portions of the case record from any such LDSS. This request must be made within one business day of the oral report date. The LDSS must also review any additional hardcopy records that are relevant to the family and maintained by any LDSS within five business days of the oral report date [18 NYCRR 432.2(b)(3)(i)].

How to use prior history

Reviewing a family's prior history and current LDSS records may inform the LDSS how the family addressed previous safety concerns, how it may have addressed issues of child safety or well-being in the past, and whether the family has or is currently receiving services. The prior history may also reveal the level of cooperation exhibited by the family in the past and provide insight into what actions have or have not been successful.

Although reviewing previous CPS history may be informative, the LDSS must not allow themselves to become biased. Evidence of prior reports, including indicated reports, does not automatically make a family ineligible to participate in FAR for the current report. The LDSS must remain open-minded and engage the family based upon their present circumstances. The existence of previous reports may suggest that FAR could be more effective than repeated CPS investigations.

A review of the family's previous CPS history may provide insight into determining whether children are currently safe, but cannot be the only factor used to determine safety.

4. Conducting the initial safety assessment

During the seven-day assessment, the LDSS and the family assess the physical health and well-being of the children, including the child's living conditions, and identify any safety factors. Every child named in the report must be seen, and children who are developmentally capable should be engaged in the assessment process. The LDSS must use the safety criteria designated by OCFS to determine if there are one or more safety factors that present an immediate or impending danger of serious harm to any child, and make a decision regarding the children's safety status [18 NYCRR 432.13(d)(2)(i)].

The LDSS should ask the parents or caretakers to identify relevant collateral contacts. The LDSS should *not* routinely seek information from collateral contacts without first asking the family and receiving their agreement. Collateral contacts may include, but are not limited to, hospitals, family medical providers, schools; police, social services agencies and other agencies providing services to the family, relatives; extended family members; neighbors, and other persons who may provide information on the status of the child's safety [18 NYCRR 432.13(d)(2)(ii)].

The LDSS must apply the safety criteria in the OCFS-designated safety assessment to determine if one or more safety factors place a child in immediate or impending danger. When the LDSS enters the information gathered into the safety assessment in CONNX, a safety decision

regarding the child's safety status is generated. Using this information, the LDSS should determine whether:

- One or more safety factors are present
- Any of the identified safety factors place the child in immediate or impending danger of serious harm (safety decision number is higher than 2)
- There is a need to develop a safety plan to effectively remove the immediate or impending danger of serious harm to the child

If the safety decision number is 1 or 2, the assignment to the FAR track should be maintained, unless there is a compelling reason to change the assignment. If the safety decision number is 3 or higher, the report must be assigned to the CPS investigation track. If the safety decision requires a change from FAR to CPS investigation, the LDSS should discuss the reasons for the change with the family.

5. Documentation of the initial safety assessment

Safety assessments for FAR are recorded in CONNX in the same manner as safety assessments for CPS investigations. Safety assessments must be completed, recorded, and approved by a CPS supervisor within seven days of receipt of the report from the SCR [18 NYCRR 432.13(d)(3)].

When a report has been initially assigned to FAR and the seven-day safety assessment is complete, the LDSS must decide whether the report should remain assigned to the FAR track or be changed to the CPS investigation track. If the report is to remain assigned to the FAR track, the LDSS must document the reason(s) for this decision. Similarly, if the track assignment is changed from FAR to an investigation, the reason(s) for the change must be documented [18 NYCRR 428.5(c)(2), 432.13(e)(5)(iii)].

The LDSS also may change the track assignment of a report initially assigned to the investigative track, re-assigning it to the FAR track [18 NYCRR 432.2(b)(3)(ii)(g)]. While such a change is allowed, it is not the best way to begin working with a family. The LDSS may wish to exercise this option when a report was eligible for FAR, but the initial assignment was to the CPS investigation track. If the LDSS begins their investigation and determines the family would be better served by FAR, they may choose to reassign the report to the FAR track. Before making such a change, the LDSS must speak with the family, inform them about FAR, explain that participation in FAR is voluntary, and determine that the family is willing to participate in FAR. The reasons for this change must be documented.

Refer to the CONNX Family Assessment Response (FAR) Build Job Aid for guidance on properly documenting the safety assessment and other FAR activities in CONNX.

6. Ongoing safety assessments

After completing the initial, seven-day safety assessment, the LDSS is responsible for continually monitoring the safety of the children throughout their work with the family, until the FAR case is closed [18 NYCRR 432.13(d)(4)]. To comply with this requirement, the LDSS must continue to assess child safety in each interaction with the family.

7. Risk assessment

The LDSS is required to conduct ongoing, periodic risk assessments for all families participating in the FAR track [18 NYCRR 432.13(e)(2)(v)]. Risk is assessed in conversation with the family, including conversations about family history and current struggles. The LDSS observes family interactions, and solicits and discusses the family's concerns. These discussions should also include children who have the ability to participate.

While the FLAG was designed to document family needs and strengths, the topics addressed in this tool are similar to those in risk assessment instruments such as the RAP, so the FLAG can be helpful in generating conversations about the potential for future maltreatment and how to reduce risk. The LDSS should also use other engagement tools, taught in FAR training, to help generate conversations with family members, including children. See **Chapter 14**, *Appendices*, **Section N**, *Documentation guidelines for Family Assessment Response (FAR) cases,* for a description of some of these tools.

F. Documenting FAR activities

The LDSS is required to document all activities in CONNX [18 NYCRR 432.13(e)(5)]. This should include documenting the manner in which a collaborative FAR approach and process was used. The progress notes should reflect the discussions with the family, including the family's thoughts, opinions, and concerns; and any FAR techniques used. The LDSS should document the family's deliberative process and any decisions that were made. See **Chapter 14**, *Appendices*, **Section N**, *Documentation guidelines for Family Assessment Response (FAR) cases,* for detailed and specific information about documenting a FAR case.

Information to be documented in the FAR case record includes, but is not limited to:

- Demographic data for each child and family member and any "other persons" named in the report.
- Specific activities undertaken to initiate a safety assessment within 24 hours, including how the LDSS determined the children were safe. This information should be very specific, documenting questions asked, responses given and observations made.
- Findings of the initial, seven-day safety assessment. The LDSS must explain the reasons for assigning the report to the FAR track. Also, if a report is initially assigned to the FAR track, but later is changed to the investigation track, the reason for that change must be documented.
- A description of CPS's first contact with the family, including the manner in which the first meeting with the family was arranged. CPS must also document that he/she explained the FAR process to the family, describing the information provided to the family, and that the family consented to participate in FAR.
- The date and manner in which the family was notified in writing about the existence of the report.
- Information to complete at least one FLAG, based on discussions with the family. Any subsequent FLAGS should also be documented. CPS should document which family members participated and the conclusions reached in any discussions with the family.
- Each contact with the family and with collateral contacts, including who was present and what occurred during the meeting.
- Services that were offered to the family, the services that were accepted, and services provided directly and/or through contractual provider.
- Findings of periodic risk assessments, including information derived from the FLAG, the RAP (if used), discussions with the family, and the LDSS' observations.
- Evaluations and assessments of progress.
- A description of any ongoing plans for supportive services to be provided after the case is closed, if applicable.
- Factors allowing for the closing of the case and a description of any discussion with the family regarding the decision to close the case.

G. Changing to investigation track after seven days

After the assignment of a report to the FAR track has been finalized, circumstances may occur that render the report no longer eligible for the FAR track. When this occurs, CPS must make a new report to the SCR. CPS must assign the new report to the investigation track and close the FAR report.

A report assigned to the FAR track ceases to be eligible for FAR in any of the following circumstances:

- *A subsequent report is received that is ineligible for FAR.* When a FAR case is open and a CPS receives a new report that is ineligible for FAR, CPS must close the FAR report and assign the subsequent report to the investigative track. Allegations from the FAR report should be addressed in the CPS investigation if there are outstanding concerns [SSL §427-a(4)(h); 18 NYCRR 432.13(c)(5)(ii)(b)].
- *There is evidence of abuse or immediate safety concerns.* The LDSS or a community-based agency who is working with the family discovers evidence of child abuse (not maltreatment), including sexual abuse, or otherwise has reasonable cause to suspect child abuse [SSL §427-a(4)(f)(i); 18 NYCRR 432.13(c)(5)(ii)(a)].
- The family fails to cooperate and there is evidence of maltreatment. The parent(s) refuse to cooperate with the LDSS in developing or implementing a plan to address the family's problems *and* there is evidence of, or reasonable cause to suspect, child maltreatment [SSL §427-a(4)(f)(ii); 18 NYCRR 432.13(c)(5)(ii)(a)].

What is evidence of maltreatment?

The fact that a parent ceases to cooperate is not cause to call in a new report to the SCR. A family's refusal to continue cooperating in the FAR process is not a form of maltreatment and is not reportable to the SCR. **There must be both a refusal to cooperate and evidence of maltreatment.**

For example, consider a report with an allegation of "Inadequate Food, Clothing, Shelter," alleging there was no food in the home and a child is begging neighbors for food. The LDSS meets with the family, finds the house is stocked with food, the children say they always have food, and the worker finds no safety factors. After about ten days, the family decides it no longer wishes to cooperate and tells the LDSS that he/she is no longer welcome in the home; the Family Led Assessment Guide (FLAG) was not completed. In this scenario, although the family ceased to cooperate, there was no evidence of maltreatment. Therefore, the LDSS should not call in a new report.

If the family refuses to cooperate and the LDSS has not had an opportunity to assess whether or not there is evidence of the maltreatment specified in the report, the allegations in the *original* report can be considered sufficient evidence of maltreatment for the LDSS to make a new report. The LDSS should make a new report based on the original allegations. The fact that there *could* be other maltreatment for which no evidence has been observed is not evidence of maltreatment.

Finally, if there is a failure to cooperate and the LDSS has seen evidence of maltreatment, either as alleged in the FAR report or some other instance of maltreatment, the LDSS must call in a new report.

When any of these circumstances occur, the LDSS should use the closing reason "FAR ineligible, INV opened" in CONNX, which allows the FAR report to be closed without completing a FLAG. The LDSS must document the reasons for closing the case and should identify the new report in progress notes.

When a FAR case is closed and an investigation is opened for one of these reasons, the LDSS must ensure that anyone who has been working with the family and individuals recently assigned to the new case, communicate with each other to the extent practicable to minimize the disruption of any services being provided and coordinate with existing services being provided [SSL §427-a(4)(h)].

H. Addressing a subsequent report for an open FAR case

When there is an open FAR report for a family and the LDSS receives a new report from the SCR involving the same family, the LDSS must decide if the subsequent report can be assigned to FAR.

- If the new report is ineligible for FAR, it is assigned to the investigation track and the open FAR report must be closed [SSL §427-a(4)(h); 18 NYCRR 432.13(c)(5)(ii)]. A family cannot have an open FAR report and an open investigation report at the same time.
- If the subsequent report is eligible for FAR, it is assigned to FAR and incorporated into the same FAR case, if possible.

1. Subsequent report assigned to CPS investigative track

When a FAR report is closed at the same time an investigation is begun, The LDSS must work cooperatively with any community-based agency, or individuals who were working with the family in FAR to minimize the disruption of any existing services being provided to the family [SSL §427-a(4)(h)].

If the same representative of the LDSS that has been working with the family on the FAR track is assigned to conduct the investigation, he/she should meet with the family to discuss the new report and explain the reasons that LDSS must respond to the report with an investigation. If a new representative of the LDSS is assigned to conduct the investigation, the LDSS should facilitate an exchange of information to discuss the family's needs, ideally with the family and all representatives of the LDSS involved. Regardless of whether or not a new representative of the LDSS is assigned to the investigation, the concerns addressed in the FAR process should continue to be part of the conversation with family.

When closing the FAR report in these circumstances, the LDSS should use the CONNX closing reason "FAR ineligible, INV opened." This allows the system to close the FAR report without requiring the completion of a FLAG. The LDSS must document in the progress notes the reason for closing the case and that the concerns will continue to be addressed in a CPS investigation.

The LDSS conducting the investigation may include information from the closed FAR report in the progress notes of the investigation, but only if that information that is *relevant* to the subsequent report [SSL §427-a(5)(e)(iii); 18 NYCRR 432.13(c)(5)(iii)]. Information in FAR records is legally sealed and may only be disclosed under very limited circumstances specified in the law [SSL §427-a(4)(c)(i), 427-a(5)(d); 18 NYCRR 432.13(g)]. Any information from a FAR record that is added to the record of an investigation becomes part of that record and subject to the rules regarding disclosure of investigation records [SSL §427-a(5)(e)(iii)].

2. Subsequent report assigned to the FAR track

If there is an open FAR report and a new report involving the same family is received that is eligible for FAR, the new report is added to the open FAR case and often consolidated with the open report. If, however, a subsequent report involves the same family but a separate household, it may be preferable to maintain two separate reports under the same case ID.

Please note, when there are two households and the subsequent report is consolidated, separate safety assessments and FLAGs should be completed for each household.

Whenever there is an open FAR case and the DSS receives a subsequent report, the LDSS must inform the family about the new report and discuss the concerns identified in it [18 NYCRR

432.13(e)(2)(i)(d)]. The LDSS is not required to provide the parents with a new written notification of the subsequent report unless a parent requests one.

The LDSS must always initiate an assessment of the current safety of the children within 24 hours of receipt of a subsequent report and document their findings in progress notes. This assessment may be made by phone or face-to-face contact with the source or a collateral contact, or by contacting the child or family directly [SSL §427-a(4)(c); 18 NYCRR 432.13(d)]. If the reports are consolidated, there is not requirement to conduct a complete seven-day safety assessment. If reports are not consolidated, the system will require a new seven-day safety assessment and a new FLAG for a subsequent report.

Consolidating FAR reports

Rules for report consolidation are the same for FAR as for investigation consolidation. If the timing is right and the reports involve the same family and similar allegations, the reports may be consolidated (see **Chapter 4**, *Special Circumstances in Report Processing* for information about consolidating reports). In deciding whether to consolidate a subsequent report with an open FAR report, the LDSS should consider whether there will be time to adequately address the concerns in the subsequent report and still close the open report in a timely manner.

I. FAR administrative requirements

1. Education and training of LDSS representatives

The minimum education and training standards for CPS investigators, as specified in New York State regulations is required for any representative of an LDSS or community based agency responding with the FAR track [18 NYCRR 432.13(f)(1)(ii)(a), 432.13(f)(3)(ii)]. LDSS representatives providing the FAR response must also fulfill any other requirements applicable to all staff, such as experience, employment, personal references, criminal background attestation, and a SCR database check [18 NYCRR 432.13(f)(1)(iii)].

Individuals providing the FAR response must also complete FAR training, as specified by OCFS [18 NYCRR 432.13(f)(1)(ii)(b)].

2. Supervision

An LDSS supervisor must review the assessments and decisions made by the LDSS representative providing the FAR response, including, at a minimum, progress notes, the initial seven-day safety assessment, the decision of whether to assign a report to FAR or an investigation, the completed Family Led Assessment Guide, and the decision to close the case [18 NYCRR 432.13(f)(1)(iv)(a)-(b)].

3. Case assignments

Each LDSS implementing FAR must develop a plan, to be approved by OCFS, describing its program organization, staffing plan, and case assignment process [SSL §427-a(2); 18 NYCRR 432.13(f)(1)(v)(a)]. The plan must include:

- A description of the policy and process for assigning reports to the FAR track, including whether FAR cases are assigned to CPS staff who are dedicated exclusively to FAR or to staff who work on both FAR and investigations
- If the LDSS permits CPS investigators to be assigned to cases in both tracks, a description of the measures that the LDSS will take to maintain the integrity of both approaches, including a description of the measures that will be taken to support such staff
- The number of staff and supervisors that may be assigned to cases in both the FAR track and the investigative track
- The number of staff and supervisors to be assigned exclusively to FAR cases, including staff of any community-based agency that will perform FAR activities

4. Contracting for FAR activities

An LDSS may contract with a qualified community-based preventive services agency to work with families to provide FAR activities, including needs assessment, the identification of services to address identified needs, and the provision of services [SSL §427-a(4)(e)]. Any such contractual agreement between an LDSS and a community agency must [18 NYCRR 432.13(f)(3)(i)-(iv)]:

- Adhere to all laws and regulations applicable to FAR

- Require staff at the community-based agency to meet the minimum education and training requirements for LDSS representatives, as specified in state regulations and by OCFS;
- Require the community-based agency to inform the LDSS if staff of the community-based agency find that a FAR report is no longer eligible for FAR and should be in the CPS investigative track; and, when this occurs, a staff member of the community-based agency must immediately make a report to the SCR.
- State that CPS retains responsibility, at a minimum, for the following:
  - Conducting the initial seven-day safety assessment;
  - Deciding whether to assign an SCR report to the CPS FAR track or to the CPS investigative track; and
  - Approving the closing of the FAR report.

J. Confidentiality provisions

The confidentiality provisions applicable to case records for CPS investigations do not apply to records for FAR cases. There are specific state laws governing the confidentiality of FAR records [SSL §427-a(5)(d); 18 NYCRR 432.13(g)].

The records of a FAR report are legally sealed from the date the report is finally assigned to the FAR track [SSL §427-a(4)(c)(i)]. FAR records are maintained at the SCR for ten years from the date the report was made [SSL §427-a(5)(c); 18 NYCRR 432.13(g)(1)].

1. Entities with access to FAR records

All reports assigned to FAR and records created as part of FAR, including reports made or written as well as any other information obtained or photographs taken concerning such reports or records, are confidential [SSL §427-a(5)(d); 18 NYCRR 432.13(g)(2)]. FAR reports or information in FAR reports can only be made available to [18 NYCRR 432.13(g)(2)(i)-(vi)]:

- Staff of OCFS, and persons designated by OCFS, that include, but are not limited to:
  - Local or regional child fatality review team members, if the child fatality review team is preparing a fatality report pursuant to SSL §§ 20, 422-b
  - Members of a local or regional multidisciplinary investigative team (MDT) established pursuant to SSL §423(6), when the MDT is investigating a subsequent report of suspected child abuse or maltreatment involving a member of a family who was part of a FAR case; only that information from the FAR record that is relevant to the subsequent report may be entered into the record of the subsequent report that is to be provided to the MDT
  - Citizen Review Panels established pursuant to SSL §371-b, if any information obtained is not to be re-disclosed and will only be used for the purposes described by law
- The CPS responsible for the FAR case
- Community-based agencies that have contracts with the LDSS to carry out activities for the LDSS under FAR
- Providers of services under FAR
- A CPS investigating a subsequent report of abuse or maltreatment involving the same subject or the same child or children named in the report
- The subject of the report, but *not* any other persons named in the report
- Courts, but only under specific circumstances, described in **Section J.2**, *Court access to FAR records,* of this chapter.

2. Court access to FAR records

FAR case is still open

A court may receive information from the record of an *open* FAR case, but only under the following conditions:

- The court makes a judicial finding that such reports, records, and any information concerning them are necessary for the determination of an issue before the court; *and*

- The court first gives notice and an opportunity for the subject of the report and all parties to the proceeding to be heard; *and*
- The court issues an order or a subpoena requesting the record.

Upon receiving the court order or subpoena, the LDSS must submit the FAR reports, records, or information to the court for its inspection and follow any directions of the court as may be necessary to protect confidentiality, including but not limited to, redaction of portions of the reports, records, and information [SSL §427-a(5)(d)(vi); 18 NYCRR 432.13(g)(3)].

FAR case is closed

A court may not access sealed FAR records, reports, or other information, except when:

- The information is made part of a subsequent CPS report and an LDSS initiates an Article 10 proceeding regarding the subsequent report, *or*
- The information is voluntarily presented by a subject of a closed FAR report.

3. Law enforcement

New York State law does not authorize LDSSs to provide information from FAR records or reports to law enforcement, including to a district attorney. Therefore, agreements between LDSSs and law enforcement agencies or district attorneys in which the LDSS systematically informs the district attorney or law enforcement agencies about certain reports are not applicable to reports that are assigned to FAR.

However, when information from a FAR report has been added to a report that is assigned to the investigative track because it is relevant to that investigation, all information in the record of the investigation can be shared to the extent permitted by law (see **Chapter 6**, *Child Protective Services Investigation*, **Section H,** *Evaluation of need for protective removal*).

4. Mandated reporters

New York State law does not authorize LDSSs to provide information from FAR records or reports to mandated reporters. When a report is assigned to an investigation, the LDSS informs the mandated reporter, upon request, about the outcome of the report. As there is no determination for a report assigned to FAR, if a mandated reporter asks about such a report, the LDSS may inform the mandated reporter only that the report is being addressed by FAR. It could be helpful for the LDSS to provide general information about the FAR process to the mandated reporter.

A letter is available in CONNX for an LDSS to use to respond to a mandated reporter who asks for information about a report he/she made that was assigned to the FAR track.

5. Re-disclosure of FAR information

Persons who are given access to legally sealed FAR reports are not permitted to re-disclose such records, reports, or information, except as follows [SSL §427-a(5)(e)(i)-(iv); 18 NYCRR 432.13(g)(5)(i)-(iv)]:

- OCFS and LDSSs may disclose aggregate, non-client identifiable information.
- LDSSs, community-based agencies that have approved contracts for the provision of some FAR duties, and providers of services for FAR may exchange FAR reports, records

and other information as necessary to carry out activities and services related to the same person(s) or persons addressed in the records of a FAR case.

- CPS may unseal a FAR report, record, or information when the record is relevant to a subsequent report of suspected child abuse and maltreatment.
  - CPS may use the information for purposes of the investigation of the subsequent report, and may include the relevant information from the FAR record in the record of the subsequent report. CPS should include only the information that is relevant to the new investigation.
  - If CPS initiates an Article 10 proceeding in conjunction with a subsequent report, and information included in a previous FAR report is relevant to the proceeding, CPS must include the relevant information from the FAR record in the record of the investigation of the subsequent report and make that information available to the family court and the other parties for use in the Article 10 proceeding. The Family Court may consider the relevant information from the previous FAR case in making any determinations in the proceeding.
  - The relevant Information from a FAR case that is included in the record of a subsequent investigation then becomes subject to the laws and regulations regarding confidentiality that apply to the record of the investigation of the subsequent report.
- At his/her discretion, the subject of a FAR report may, present a report, records, and information concerning such report and records from the FAR case, in whole or in part, in any Article 10 proceeding in which the subject is a respondent. A subject of the report also may, at his or her discretion, present information from a FAR report, in whole or in part, in any proceeding involving custody or visitation or in any other relevant proceeding. In making any determination in such a proceeding, the court may consider any portion of the FAR report or records presented by the subject of the report that is relevant to the proceeding. However, a court is *not* authorized to order the subject to produce a FAR report, records or information, in whole or in part.

K. Hearings and expungements

A subject of a report assigned to FAR does not have a right to administrative appeal under SSL §422(8) or §424 because there is no determination made in a report assigned to FAR.

A subject of a report assigned to FAR does not have a right to seek early expungement of the FAR report under SSL §422(5)(c).

Chapter 6: **Child Protective Services Investigations**

A. Summary of statutory requirements regarding CPS investigations A-1

B. Summary of regulatory requirements for addressing CPS reports and investigations B-1

1. Initiation of the investigation B-1
2. Full investigation B-2
3. Other Investigative Activities B-3

C. Intake of reports by the LDSS C-1

1. Procedures for receiving reports from the SCR C-1
2. Procedures for CPS workers making reports to the SCR C-1
3. Checking information received from the SCR C-2
   a. Demographic information C-2
   b. The need to contact law enforcement C-3

D. Preliminary and ongoing safety assessments D-1

1. Preliminary safety assessment D-1
2. The safety assessment process D-2
3. Safety Factors D-3
4. Safety decision D-8

E. CPS Risk Assessment Profile (RAP) and services E-1

1. The Risk Assessment Profile E-1
2. Risk rating and the provision of services E-2
3. Risk rating and case determination E-3
4. Referrals for early intervention services E-3

F. Interviews F-1

1. Interviewing the source of the report F-1
2. Interviewing the family F-2
   a. Addressing Limited English Proficiency F-2
   b. Providing the notice of existence F-2
   c. Maintaining source confidentiality F-2

3. Interviews with children F-5
   a. *Determining who is present during a child interview* *F-5*
   b. *Location of the interview with the child* *F-6*
   c. *Interviewing the child at school* *F-7*
4. Interviews with collateral contacts F-9
5. Follow-up contacts with household members F-10
6. Uncooperative subjects F-11
   a. *Pre-petition court orders for access* *F-11*
   b. *Protocols when considering seeking a court order for access* *F-12*

G. Obtaining information about physical injuries and health G-1

1. Observation of physical injuries G-1
   a. *Observation of normally clothed areas of a child's body* *G-1*
   b. *Is it necessary to observe normally clothed areas of the child's body?* *G-2*
   c. *Parent/child consent for observation of a child's body* *G-2*
   d. *Conducting an observation of normally clothed areas of a child' body* *G-4*
2. Medical examinations and evaluations G-4
3. Photographs G-7

H. Evaluation of need for protective removal H-1

I. CPS investigation progress notes I-1

J. Special considerations for cases with infants J-1

1. Safe Sleep J-1
   a. *CPS responsibility for infant sleeping conditions assessment* *J-2*
   b. *Evaluating sleeping conditions for infants* *J-2*
2. Positive toxicology of newborns J-3
   a. *Addressing reports involving positive toxicology of infants* *J-3*
   b. *Creating a plan of safe care* *J-4*
3. Early intervention referrals J-5

K. Child fatalities K-1

1. 24-Hour Fatality Report and 24-Hour Safety Assessment K-1
2. 30-day fatality report and 30-day safety assessment K-2
3. Conclusion safety assessment K-3
4. Investigation of re-reports of child fatalities K-3

5. LDSS responsibilities for reporting child fatalities K-4

L. Collaborating with the Criminal Justice System L-1

1. Overview L-1
2. Communication with district attorney and police agencies L-1
   - *a. Local agreements for information sharing L-1*
   - *b. State-required information sharing L-2*
   - *c. Suspected false reports L-2*
   - *d. Reporting crimes to law enforcement L-3*
   - *e. Sharing CPS information for a law enforcement investigation L-3*
   - *f. Special procedures for when a child is missing L-3*
3. Development of cooperative investigative procedures with the district attorney .. L-4
4. Coordinating CPS and criminal investigations L-4
   - *a. Cooperative efforts between CPS and law enforcement L-5*
   - *b. Requesting police protection L-5*
5. Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs) L-7
   - *a. Multidisciplinary Teams (MDT) L-7*
   - *b. Child Advocacy Centers (CAC) L-7*
6. Missing or abducted children L-8

M. Commercial sexual exploitation of children and human trafficking M-1

1. Overview of sex trafficking M-1
2. Child Welfare requirement to screen for sex trafficking M-2
3. Requirement to report sex trafficking M-2

N. Domestic violence N-1

1. Indicators of domestic violence N-2
2. Considerations for conducting a CPS investigation when there is domestic violence N-3
3. CPS interventions when there is domestic violence N-4
4. CPS determination decisions in relation to domestic violence N-6
5. Coordination in cases with domestic violence N-8
   - *a. Law enforcement N-8*
   - *b. Community resources / domestic violence programs N-8*

c. Reports involving person(s) residing in residential programs for victims of domestic violence N-9

O. Determinations / Investigation conclusions O-1

1. Standards for making a determination O-1

a. Elements of neglect / maltreatment O-1

b. Elements of abuse O-2

2. Indicated reports O-2
3. Unfounded reports O-3
4. Determining the investigation conclusion closure reason O-4

P. Case closing P-1

1. Decision P-1
2. Other considerations and procedures for closing a case P-2

A. Summary of statutory requirements regarding CPS investigations[1]

Section 424 of the Social Services Law (SSL) enumerates the duties of child protective services (CPS) concerning reports of child abuse and/or maltreatment. Among the duties that CPS must fulfill are the following. (Please note that Title Six of Article Six of the SSL is the Title that sets forth the statutory requirements for child protective services.)

Section 424(1)

CPS must receive on a twenty-four hour, seven day a week basis all reports of suspected child abuse or maltreatment.

SSL Section 424(3)

Not later than seven days after receipt of the initial report, CPS must send a preliminary written report of the initial investigation, including evaluation and actions taken or contemplated, to the Statewide Central Register of Child Abuse and Maltreatment (SCR) in the form or manner prescribed by the New York State Office of Children and Family Services (OCFS). This requirement is fulfilled by completing the seven-day safety assessment.

SSL Section 424(4)

CPS must provide telephone notice and immediately forward a copy of a report alleging child abuse or maltreatment to the appropriate district attorney for the following categories of reports:

Any report involving the death of a child.

A report containing any allegations specified in a prior written request to the CPS from the district attorney for notice and copies of reports. The written request must specify the kinds of allegations for which the district attorney requires such notice and copies and must include a copy of the relevant provisions of the law.

SSL Sections 424(5-a)

CPS must immediately give telephone notice and forward a copy of the report to the appropriate local law enforcement agency when CPS receives a report that contains any of the following:

Allegations of suspected physical injury by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ;

Allegations of sexual abuse of a child; or

Allegations of the death of a child.

Investigations of these reports must be conducted by an approved multi-disciplinary team (MDT), where one exists.[2] In counties without an MDT, investigations of these reports must be conducted jointly by local child protective services and local law enforcement. CPS and law enforcement should develop a joint protocol detailing the procedures to be followed for the investigation of reports that are subject to the joint investigations. If such a protocol exists, CPS would follow the protocol and is not required to provide a separate notification to law enforcement. If the LDSS and law enforcement

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[1] Note: These legal requirements apply to those reports that are addressed by an investigation. There are separate requirements that apply to those CPS reports that are addressed by a family assessment response (FAR), which are described in Chapter 5.

[2] See SSL §423(6) for information about MDTs.

develop such a protocol, the LDSS must submit the protocol to OCFS for approval, and OCFS must approve or disapprove it within thirty days of submission. Regardless of the existence or absence of such a protocol, CPS may consult with law enforcement on any report where CPS determines that it is necessary to do so.

SSL Section 424(5-b)

CPS must assess in a timely manner whether it is necessary to give notice of a report to the appropriate local law enforcement entity when it receives a report meeting the following criteria:

1. The report contains an allegation of maltreatment that includes physical harm; and
2. The report was made by a mandated reporter; and
3. There are two or more other indicated or open reports within the last six months that involve the same child, sibling, or other children in the household, or the same subject of the report.[3]

Again, nothing prohibits CPS from consulting with local law enforcement on any child abuse or maltreatment report where CPS determines that such consultation is necessary.

Section 424(6)(a)

Upon receipt of a report, CPS must commence, within 24 hours, an appropriate investigation. An investigation must include:

- An evaluation of the environment of the child named in the report.
- An evaluation of the environment of any other children in the same home.
- A determination of the risk to such children if they continue to remain in the existing home environment.
- A determination of the nature, extent and cause of any condition enumerated in such report.
- A determination of the name, age and condition of the children in the home.
- Seeing to the safety of the child or children.
- Notification in writing to the subjects of the report and other persons named in the report of the existence of the report and of their respective rights pursuant to Title Six of Article Six of the Social Services Law in regard to amendment of the report. (Those rights are set forth in SSL §422(8).)

SSL §424(7)

CPS must determine, within 60 days, whether a report is “indicated” or “unfounded.”

SSL §424(8)

CPS must refer suspected cases of falsely reporting child abuse and maltreatment, in violation of Penal Law § 240.50(4), to the appropriate law enforcement agency or district attorney.

SSL §424(9)

CPS must take a child into protective custody to protect the child from further abuse or maltreatment when appropriate and in accordance with the provisions of the Family Court Act.

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[3] For determining whether there have been two or more such reports, duplicate reports are treated as one report. However, each separate intake report “consolidated” into one investigation stage is to be counted individually for this purpose.

SSL §424(10)

Based on the investigation and evaluation conducted pursuant to Title Six of Article Six of the Social Services Law (i.e., a CPS investigation), CPS must offer to the family of any child believed to be suffering from abuse or maltreatment such services as appear appropriate for either the child or the family or both.

Prior to offering such services to a family, a worker must explain that CPS has no legal authority to compel the family to receive said services, but may inform the family of the obligations and authority of the child protective service to petition the Family Court for a determination that a child needs care and protection.

SSL §424(11)

In those cases in which an appropriate offer of service is refused and CPS determines, for that or any other appropriate reason, that the best interests of the child require Family Court or criminal court action, CPS must initiate the appropriate Family Court proceeding or make a referral to the appropriate district attorney, or both.

SSL §424(12)

CPS must assist the Family Court or criminal court during all stages of the court proceeding in accordance with the purposes of Title Six of Article Six of the Social Services Law and the Family Court Act.

SSL §424(13)

CPS must coordinate, provide, or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the Family Court.

B. Summary of regulatory requirements for addressing CPS reports and investigations

1. Initiation of the investigation

CPS must initiate a child protective investigation or Family Assessment Response[4] (FAR) within 24 hours after receiving a report. An investigation is initiated in the following manner [18 NYCRR 432.2(b)(3)(i)].

Within 24 hours of receiving a child abuse and/or maltreatment report, CPS must conduct face-to-face contact or telephone contact with the subject(s) and/or other persons named in the report (which may include children), or other persons - including the source of the report, if known — who may be able to provide information about whether the child may be in immediate danger of serious harm. The initial contacts must be sufficient to determine whether the child may be in immediate danger of serious harm.

Within one business day of the oral report date, CPS must:

- Review all prior SCR records in which one or more family members are named, including any legally sealed reports (unfounded or family assessment response reports) where the current report involves a subject of the legally sealed report, a child named in the legally sealed report, or a sibling of a child named in the legally sealed report.
- Request copies of materials in the case records of other districts that are not part of the CONNECTIONS (CONNX) record (e.g., medical reports). The district maintaining the case record must provide the requested pertinent portions of their records to the inquiring CPS within five business days of receiving such request.

Within five business days of receipt of the report, CPS must review its own CPS records that apply to the prior SCR reports referenced above, including legally sealed unfounded and family assessment response reports, where the current report involves a subject, a child, or a child's sibling named in the prior report. Also, CPS may review the LDSS records on closed and open services cases. This step alone does not, however, constitute initiation of the investigation.

> The content of the new report must be evaluated to establish the immediacy with which the child and family should be seen. The steps taken during the first 24 hours may differ depending upon the allegations contained in the report, the information found in the record review, and the information received from the initial contact(s).

All casework contacts and related case activities conducted in the first 24 hours of the investigation must be documented in a timely manner in case progress notes [18 NYCRR 428.5(c)(2)].

[4] See **Chapter 5,** *Family Assessment Response (FAR)*

2. Full investigation

A full child protective investigation must include the following activities [18 NYCRR 432.2(b)(3)(ii)]:

1. Conducting face-to-face interviews with subjects of the report and family members of such subjects, including children named in the report. If at any time CPS is refused access to the home and/or to observe or talk to any child in the household, or if a child in the household cannot be located, the CPS worker, in consultation with a CPS supervisor, must assess within 24 hours of the refusal whether it is necessary to seek a court order to obtain access. The assessment and the decision must be clearly documented in progress notes for the investigation.
2. Obtaining information from the reporting sources and other collateral contacts, such as hospitals, family medical providers, schools, police, social service agencies and other agencies providing services to the family, relatives, extended family members, neighbors and other persons who may have information relevant to the allegations in the report and to the safety of the children.
3. Information identifying the reporter and/or source of a report of suspected child abuse or maltreatment, as well as the agency, institution, organization, and/or program with which such person(s) is associated, is confidential and may not be disclosed to any person not authorized by law to have access to such information.
4. Conducting a preliminary assessment of safety within seven days of receipt of the report. The safety assessment is used to determine if the child named in the report and any other children in the household may be in immediate danger of serious harm. If any child is assessed to be unsafe, CPS must immediately take appropriate controlling interventions to protect the child(ren). The results of each safety assessment must be documented in the case record in the form and manner required by OCFS. (This requirement is fulfilled by completing the seven-day safety assessment in CONNX.)
5. Determining the nature, extent and cause of any condition enumerated in the CPS report and of any other condition that may constitute abuse or maltreatment.
6. Obtaining the name, age, gender, ethnicity and condition of each child in the home.
7. Notifying the subjects and other persons named in the report (except children under the age of 18 years), in writing, no later than seven days after receipt of the oral report, of the existence of the report and the subject's rights pursuant to Title 6 of Article 6 of the Social Services Law concerning amendment or expungement of the report.

If there are children named in the report who do not live in the household or whose parent or legal guardian is not listed in the report, the child's parent(s) or legal guardian must be listed as an "other person" so that the children's parents or legal guardians can be notified about the existence of the report.

Within seven days of receiving the report, if the LDSS is approved to provide Family Assessment Response (FAR), the report meets the criteria for FAR, and that response effectively supports the safety of children named in the report and meets the family's needs, CPS may assign the report to family assessment response [18 NYCRR 432.13(c)]. See **Chapter 7,** *Family Assessment Response (FAR)*, for information about that alternative response.

Prior to making a determination of whether to either indicate or unfound the report, the investigation must include, but is not limited to [18 NYCRR 432.2(b)(3)(iii) 18 NYCRR 432.2(b)(3)(ii)]:

- One home visit with one face-to-face contact with the subjects and other persons named in the report to evaluate the environment of the child named in the report as well as other children in the same home.
  - Note: If not identified by the SCR, and if known, CPS must add any non-custodial parent as an "other person named in the report".
  - As an "other person named in the report", a Notice of Existence for CPS Investigations must be sent to the non-custodial parent.
  - If a child has contact with the non-custodial parent in the non-custodial parent's home, reasonable efforts must be made to have a face-to face contact with the non-custodial parent in the non-custodial parent's home.
  - The efforts to make face-to-face contact must be documented in CONNX, and if not achieved, the reasons such contact was not achieved must also be documented.
  - If CPS is unable to make face-to face contact, they must make reasonable efforts to achieve another type of contact (i.e. telephone, video conference, in writing).
  - These additional efforts to contact the non-custodial parent must be documented in CONNX.
- An assessment of the current safety of all children in the home or named in the report
- An assessment of the risk of future abuse and maltreatment of the child(ren)
- Documentation of such assessments in the form and manner specified by OCFS
- A determination of the nature, extent and cause of any condition cited in the report

3. Other Investigative Activities

CPS has the sole responsibility for making a determination within 60 days after receiving a report whether there is some credible evidence of child abuse or maltreatment so as to either indicate or unfound the report [18 NYCRR 432.2(b)(3)(iv)]. A CPS supervisor must review and approve the decision to either indicate or unfound the allegation(s) of child abuse and/or maltreatment [18 NYCRR 432.2(b)(3)(v)].

CPS must conduct a risk assessment for all children named in a report when making key case decisions including, but not limited to, whether any controlling interventions are needed to provide safety for the child(ren) [18 NYCRR 432.2(d)].

CPS must assess whether the best interests of the child require Family Court or Criminal Court action, and must initiate such action, whenever necessary [18 NYCRR 432.2(b)(3)(vi)]. See **Chapter 9,** *Family Court Proceedings***,** for information about Family Court and **Section H** of this chapter**,** *Evaluation of need for protective removal*, for information about interactions with law enforcement and the criminal justice system.

Where appropriate, CPS is responsible for providing and coordinating, or arranging for the provision and coordination of rehabilitative and foster care services [18 NYCRR 432.2(b)(4)(i)], and is responsible for monitoring the provision of services, including foster care services, to children named in an open indicated report, when CPS is not the primary service provider [18 NYCRR 432.2(b)(5)(i)]. See **Chapter 8**, *Service provision and development of a FASP with a*

protective program choice, for information about services provision and **Chapter 9**, *Family Court Proceedings*, for information about interactions with Family Court.

Case progress notes must begin upon receipt of a report of suspected child abuse or maltreatment and must continue until the case is closed to all services. Progress notes must be made as contemporaneously as possible with the occurrence of the event or the receipt of the information that is to be recorded [18 NYCRR §428.5(a)]. See **Section I** of this chapter**,** *CPS investigation progress notes,* for additional information.

C. Intake of reports by the LDSS

New York State mandates that each local CPS be capable of receiving reports of suspected child abuse or maltreatment twenty-four hours a day, seven days a week [SSL §424(1); 18 NYCRR 432.2(b)(2)]. Reports are transmitted to CPS by the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) [SSL §422(2)(a)], which is part of the Office of Children and Family Services (OCFS).

1. Procedures for receiving reports from the SCR

Reports are sent via CONNX directly to the CPS unit of the local department of social services (LDSS). There, a "noisy alert" signals that a CPS caseworker needs to sign on and retrieve the report from the CONNX system. CPS must acknowledge receipt of each report within fifteen minutes of the noisy alert.

During non-business hours (evenings, weekends, holidays), the SCR notifies an on-call person at the LDSS that a report has been assigned. The on-call person *must* have access to CONNX, and must access the report electronically upon notification and determine whether the report will be accepted. If the district does not accept the report within 30 minutes, the on-call person will receive a call from the SCR. If widespread power outages or other problems impact the functionality of CONNX, the SCR will use alternative transmission methods, such as verbal transmission.[5] District by district exceptions to the direct notification of an LDSS staff person during non-business hours will be considered by OCFS. Any requests for an exception must be made to the SCR in writing by the local commissioner.

An LDSS receiving a new report of suspected child abuse or maltreatment must immediately verify that the address on the report is within the jurisdiction of that LDSS. If the worker is certain that the report is not within the LDSS's jurisdiction, he or she must immediately reject the report on the Oral Report Acknowledgment screen and explain to the SCR in the Comments section the reason that the report was rejected. If the worker is not certain if the report is within the district's jurisdiction, CPS should accept the report and begin the investigation.

If CPS realizes that a case is not within its jurisdiction only after it has begun an investigation (i.e., after it has stage progressed the report to INV or FAR), CPS should immediately begin the process of transferring jurisdiction for the case to CPS in the appropriate LDSS. CPS may also find that it is appropriate to assign secondary jurisdictional responsibility to a CPS in another LDSS. In any instance in which CPS determines that it should transfer jurisdictional responsibility or assign secondary jurisdiction for a report, it should first engage in direct communication with the LDSS involved before assigning responsibility to that LDSS. (See **Chapter 4, Section D,** *Guidelines for case transfers*.) These principles also apply when the report has been assigned to a family assessment response (FAR), but there are specific considerations if the LDSS that should have responsibility for the report does not use family assessment response. (See **Chapter 5,** *Family Assessment Response (FAR)*.)

2. Procedures for CPS workers making reports to the SCR

If a caller contacts CPS directly to report suspected child abuse or maltreatment, CPS should encourage the caller to contact the SCR at **1-800-342-3720** (Mandated Reporters at **1-800-635-**

[5] OCFS. (2017). *After-Hours Transmission Procedure for Reports of Suspected Child Abuse and Maltreatment Registered by the New York Statewide Central Register of Child Abuse and Maltreatment* (17-OCFS-LCM-02)

1522). If the caller indicates a reluctance to call the SCR, CPS should attempt to interview the caller, taking down as much information as possible, including obtaining the name and contact number for the source of the information, if possible.

If the information provided by the caller provides reasonable cause to suspect child abuse or maltreatment, CPS must then contact the SCR and relay the information to SCR hotline staff. Mandated reporters who are social services workers — a category that includes CPS and other child welfare workers — have a responsibility going beyond that of other mandated reporters; they must make a report to the SCR whenever *any* person comes before them in their professional or official capacity giving them reasonable cause to suspect abuse or maltreatment. For other mandated reporters, the mandated reporter responsibility is triggered only when a potentially abused or maltreated child or person legally responsible for such a child comes before the mandated reporter in his/her professional or official capacity (See **Chapter 2,** *Mandated Reporters*.) [SSL §413(1)(a) & (d)].[6] SCR staff will determine if there is sufficient information to register a report of suspected child abuse or maltreatment.

If someone calls the LDSS stating that they have information about a family already under investigation, the caller may be connected with the CPS worker conducting that investigation, if available. Otherwise that person should be directed to the SCR.

If a caller contacting CPS directly provides information indicating an immediate threat to a child's life or safety, CPS should instruct the caller to immediately report the matter to the police and should themselves contact the police if there is sufficient location information. If any report warrants immediate attention, CPS should commence an investigation immediately when it receives the report from the SCR.

3. Checking information received from the SCR

a. *Demographic information*

When the SCR registers a report, it conducts a database search for any previous CPS history for each person listed in the report. In the new report, the SCR notifies the receiving CPS of all previous reports to the SCR involving any of the following:

- The subject of the report
- The child alleged to be abused or maltreated
- A sibling of the child
- Other children in the household
- Other persons named in the report
- Other pertinent information [SSL §422(2)(a)]

CPS should also review demographic information for the correct spelling of addresses and other information that may have been entered into the record incorrectly. If a worker identifies an issue that may warrant coding the report as "sensitive," that should be addressed with a CPS supervisor (see **Chapter 3**, *Statewide Central Register Responsibilities*, for information on sensitive cases).

The SCR immediately makes CONNX records available to CPS from all previous reports involving the subject(s) of the report or any child named in the report. Caseworkers should

[6] See "Xctasy's Law; Chapter 513 of the Laws of 2007" (07-OCFS-ADM-15).

check the Person Identification number (PID) for each person named in the report and merge PIDs if individuals have been assigned more than one PID. CPS should also perform its own second person search on the subject(s) and all other persons named in the report to identify any prior case history information that may not have been identified at the SCR because of misspellings or other errors.

b. *The need to contact law enforcement*

If the SCR receives a report involving any of the allegations or situations listed below, the SCR flags the report for CPS. CPS must inform law enforcement of all reports that involve any of the following:

1. An allegation of serious abuse where a child has been physically or emotionally injured or is at substantial risk of injury
2. An allegation of sexual abuse of a child
3. An allegation of the death of a child [SSL §424(5-a)]

The CPS must assess whether to inform law enforcement when there is an allegation of maltreatment resulting in physical harm, when the report is made by a mandated reporter and there have been two other indicated or pending reports made within the last six months that involve the same child, sibling, or other children in the household, or the subject of the report [SSL §424(5-b)].[7]

Safety – A child is **safe** when there is no immediate or impending danger of serious harm to a child's life or health as a result of acts of commission or omission (actions or inactions) by the child's parent(s) and/or caretaker(s).

Risk – The likelihood that a child may be abused or maltreated in the future.

In other words, "safety" refers to the condition of a child at the moment or in the immediate future. "Risk" refers to the likelihood that a child will not be safe in the future because of a problem that is likely to occur, continue, or worsen in the future.

[7] OCFS. (2006). *CPS Investigations with Multi-Disciplinary Teams/Law Enforcement, Chapter 494 of the Laws of 2006* (06-OCFS-ADM-08)

D. Preliminary and ongoing safety assessments

1. Preliminary safety assessment

"Preliminary assessment of safety" means an evaluation of safety factors to determine whether the child(ren) named in the report and any other child(ren) in the household may be in immediate danger of serious harm, and, if any child is assessed to be unsafe, undertaking immediate and appropriate interventions to protect the child(ren) [18 NYCRR 432.1(aa)].

The preliminary, or seven-day, assessment of safety begins with CPS's first review of a report of suspected child abuse or maltreatment and the first contact with persons relevant to the intake information, including the source of the report [18 NYCRR 432.2(b)(3)(i)].

The investigation (or family assessment response) must begin within 24 hours of receipt of the report. Within this 24-hour period, CPS must conduct a face-to-face contact or a telephone contact with the subject(s) or other person(s) named in the report, the source of the report, and/or other persons in a position to provide information about whether the child may be in immediate danger of serious harm [18 NYCRR 432.2(b)(3)(i)].

The preliminary safety assessment must be completed and documented within seven days of the receipt of a report of suspected child abuse or maltreatment [18 NYCRR 432.2(b)(3)(ii)(c)].

Timeframes for conducting safety assessments

CPS must conduct formal safety assessments and document them in CONNX at the following intervals and under the following circumstances:

Within seven days of the receipt of an Initial or Subsequent report of suspected child abuse or maltreatment

Within the seven days prior to completing an investigation and submitting the conclusion for approval (in a fatality report, the safety assessment is only required if there are surviving children)

As part of the Family Assessment and Service Plan (FASP) for all "Protective" cases, or whenever ongoing child welfare issues warrant the continued assessment of safety

For an individual Child Fatality report - additional safety assessments must be conducted at the following intervals where there are surviving siblings or other children present in the household. If there are none, the CPS worker must check the box in CONNX for "No surviving children" to disable these and other safety assessments:

- Within 24 hours of the receipt of the fatality report
- Within 30 days of the receipt of the fatality report

In addition to completing the preliminary safety assessment, CPS must continuously assess safety throughout the life of an open "Protective" child welfare case. Child safety must be assessed with each caseworker contact and home visit. While there is no requirement to complete the safety assessment template in CONNX each time, CPS should record ongoing assessments in progress notes.

2. The safety assessment process[8]

A safety assessment is a process in which CPS:

Identifies the presence of safety factors. CPS does this by gathering information on the presence of safety factors. A safety factor is a behavior, condition, or circumstance *that has the potential to place* a child in immediate or impending danger of serious harm. These include specific parent/caretaker behaviors, conditions in the home, family dynamics, history, and other circumstances. This process includes gathering specific information from interviews and observations as well as a review of family history to determine the presence or absence of *each* safety factor listed in the next section.

Determines if, alone or in combination, the safety factors identified place the child(ren) in immediate or impending danger of serious harm, considering these safety criteria:

- The seriousness of behaviors/circumstances reflected by the safety factor
- The number of safety factors identified
- The degree of the child's vulnerability and need for protection
- The age of the child

Makes a safety decision based on the child's safety status and the need for protective action.

Develops and implements a safety plan if a child is in immediate or impending danger of serious harm. The plan should, to the extent that is feasible, control the danger and protect the child from what is placing him/her in immediate or impending danger of serious harm for as long as the danger exists. (This is known as managing safety.)

A safety plan:

- Is a clearly identified set of actions, including controlling interventions when necessary, that have been, or will be taken without delay, to protect the child(ren) from immediate or impending danger of serious harm. Controlling interventions are activities or arrangements that are intended to protect a child from situations, behaviors, or conditions which are associated with immediate or impending danger of serious harm, and without which the dangerous situations, behaviors, or conditions would still be present, would emerge, or would in all likelihood immediately return.
- Addresses all of the known behaviors, conditions, or circumstances that create the immediate or impending danger of serious harm to the child(ren).
- Specifies the tasks and responsibilities of all persons (parent/caretaker, household/family members, caseworker, or other service providers) who have a role in protecting the child(ren).
- Delineates the timeframes associated with each action or task in the plan that must be implemented.
- Identifies how the necessary actions and tasks in the plan will be managed and by whom.
- Must be modified in response to changes in the family's circumstances, as necessary, to continually protect the child(ren) throughout the life of the case.
- Is necessary until the protective capacity of the parent/caretaker is sufficient to eliminate immediate or impending danger of serious harm to the child(ren) in the absence of any

[8] Information in this section is taken from OCFS Child Protective Services Response Training curriculum.

controlling interventions; and is monitored by CPS until the child(ren) are no longer in immediate or impending danger of serious harm.

A safety plan is *not* a set of educational, rehabilitative or supportive activities or services intended to reduce risk, address underlying conditions and contributing factors, or to bring about long-term and lasting change within a family.

CPS or LDSS must continue to gather information to reassess safety of the child(ren), throughout the time child welfare staff are involved with the family and until the case is closed, because safety is not static.

3. Safety Factors

To conduct a safety assessment, CPS assesses for the presence of specified safety factors. The Safety Factors are listed in CONNX. Below are some expanded definitions of each factor, to be used when determining the existence and the importance of each factor in each situation. The CPS worker checks each factor that applies and describes the behaviors and circumstances that are applicable to the selected safety factor, or checks that "No safety factors are present at this time."

The following definitions and examples of the 18 safety factors included in the CPS Safety Assessment are provided for the purpose of assisting CPS workers to establish parameters for reviewing or examining the safety factors. The examples should not be considered a list of all possible circumstances, conditions or behaviors related to each safety factor.

CPS workers also should always consider whether the circumstance, behavior, or condition is currently present, is likely to occur in the immediate future, or has occurred in the recent past. The identification of safety factors should not automatically be equated with the presence of an immediate danger of serious harm. Rather, the safety factors should be viewed as "red flag alerts: that the child may be in immediate danger of serious harm due to present identified circumstances, conditions or behaviors. Once safety factors have been identified, another level of decision-making occurs that guides the worker in the identification of "immediate danger of serious harm."

Safety Factor Definitions and Expanded Definitions

1. Based on your present assessment and review of prior history of abuse and maltreatment, the Parent(s)/Caretaker(s) is unable or unwilling to protect the child(ren).
    - Prior abuse or maltreatment (may include non-reported accounts of abuse or maltreatment) was serious enough to have caused or could have caused serious injury or harm to the child(ren).
    - Parent(s)/Caretaker(s) current behavior demonstrates an inability to protect the child(ren) because they lack the capacity to understand the need for protection and/or they lack the ability to follow through with protective actions.
    - Parent(s)/Caretaker(s) current behavior demonstrates an unwillingness to protect children because they minimize the child(ren)'s need for protection and/or are hostile to, passive about, or opposed to keeping the child(ren) safe.
    - Parent(s)/Caretaker(s) has retaliated or threatened retribution against child(ren) for involving the family in a CPS investigation or child welfare services, either in regard to past incident(s) of abuse or maltreatment or a current situation.
    - Escalating pattern of harmful behavior or abuse or maltreatment.

- Parent(s)/Caretaker(s) does not acknowledge or take responsibility for prior inflicted harm to the child(ren) or explains incident(s) as not deliberate, or minimizes the seriousness of the actual or potential harm to the child(ren).

2. **Parent(s)/Caretaker(s) currently uses alcohol to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child(ren).**

   Parent(s) Caretaker(s) has a recent incident of or a current pattern of alcohol use that negatively impacts their decisions and behaviors. and their ability to supervise, protect and care for the child. As a result, the caretaker(s) is;

   - unable to care for the child;
   - likely to become unable to care for the child;
   - has harmed the child;
   - has allowed harm to come to the child; or
   - is likely to harm the child.
   - newborn child with positive toxicology for alcohol in its bloodstream or urine and/or was born with fetal alcohol effect or fetal alcohol syndrome.

3. **Parent(s)/Caretaker(s) currently uses illicit drugs or misuses prescription medication to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child (ren).**

   Parent(s) Caretaker(s) has a recently used, or has a pattern of using illegal and/or prescription drugs that negatively impacts their decisions and behaviors and their ability to supervise, protect and care for the child. As a result, the parents(s)/caretaker(s) is:

   - unable to care for the child;
   - likely to become unable to care for the child;
   - has harmed the child;
   - has allowed harm to come to the child;
   - is likely to harm the child; or
   - newborn child with positive toxicology for illegal drugs in its bloodstream or urine and/or was born dependent on drugs or with drug withdrawal symptoms.

4. **Child(ren) has experienced or is likely to experience physical or psychological harm as a result of domestic violence in the household.**

   Examples of direct threats to child(ren):

   - Observed or alleged batterer is confronting and/or stalking the caretaker/victim and child (ren) and has threatened to kill, injure, or abduct either or both.
   - Observed or alleged batterer has had recent violent outbursts that have resulted in injury or threat of injury to the child (ren) or the other caretaker/ victim.
   - Parent/Caretaker/victim is forced, to participate in or witness serious abuse or maltreatment of the child (ren).
   - Child(ren) is forced, to participate in or witness abuse of the caretaker/victim.

Other examples of Domestic Violence:

- Caretaker/victim appears unable to provide basic care and/or supervision for the child because of fear, intimidation, injury, incapacitation, forced isolation, fear or other controlling behavior of the observed or alleged batterer.

5. **Parent(s)'/Caretaker(s)' apparent or diagnosed medical or mental health status or developmental disability negatively impacts his/her ability to supervise, protect, and/ or care for the child (ren).**
   - Parent(s)/Caretaker(s) exhibits behavior that seems out of touch with reality, fanatical, bizarre, and/or extremely irrational.
   - Parent(s)/Caretaker(s) diagnosed mental illness does not appear to be controlled by prescribed medication or they have discontinued prescribed medication without medical oversight and the parent/caretaker's reasoning, ability to supervise and protect the child appear to be seriously impaired.
   - The parent(s)/caretaker(s) lacks or fails to utilize the necessary supports related to his/her developmental disability, which has resulted in serious harm to the child or is likely to seriously harm the child in the very near future.
6. **Parent(s)/Caretaker(s) has a recent history of violence and/or is currently violent and out of control.**
   - Extreme physical and/or verbal abuse, angry or hostile outbursts of anger or hostility aimed at the child(ren) that are recent and/or show a pattern of violent behavior.
   - A recent history of excessive, brutal or bizarre punishment of child (ren), i.e. scalding with hot water, burning with cigarettes, forced feeding.
   - Threatens, brandishes or uses guns, knives or other weapons against or in the presence of other household members.
   - Violently shakes or chokes baby or young child(ren) to stop a particular behavior.
   - Currently exhibiting, or has a recent history or pattern of behavior that is reckless, unstable, raving, or explosive.
7. **Parent(s)/Caretaker(s) is unable and/or unwilling to meet the child(ren)'s needs for food, clothing, shelter, medical or mental health care and/or control child's behavior.**
   - No food provided or available to child, or child starved or deprived of food or drink for prolonged periods.
   - Child appears malnourished.
   - Child without minimally warm clothing in cold months; clothing extremely dirty.
   - No housing or emergency shelter; child must or is forced to sleep in street, car, etc.
   - Housing is unsafe, without heat, sanitation, windows, etc. or presence of vermin, uncontrolled/excessive number of animals and animal waste.
   - Parent/Caretaker does not seek treatment for child's immediate and dangerous medical condition(s) or does not follow prescribed treatment for such condition(s).
   - Child(ren)'s behavior is dangerous and may put them in immediate or impending danger of serious harm, and the parent/caretaker is not taking sufficient steps to control that behavior and/or protect the child(ren) from the dangerous consequences of that behavior.

8. **Parent(s)/Caretaker(s) is unable and/or unwilling to provide adequate supervision of the child(ren).**
   - Parent/Caretaker does not attend to child to the extent that need for adequate care goes unnoticed or unmet (i.e., although caretaker present, child can wander outdoors alone, play with dangerous objects, play on unprotected window ledge or be exposed to other serious hazards).
   - Parent/Caretaker leaves child alone (time period varies with age and developmental stage).
   - Parent/Caretaker makes inadequate and/or inappropriate child care arrangements or demonstrates very poor planning for child's care.
   - Parent/Caretaker routinely fails to attempt to provide guidance and set limits, thereby permitting a child to engage in dangerous behaviors.
9. **Child(ren) has experienced serious and/or repeated physical harm or injury and/or the Parent(s)/Caretaker(s) has made a plausible threat of serious harm or injury to the child(ren).**
   - Child(ren) has a history of injuries, excluding common childhood cuts and scrapes.
   - Other than accidental, parent/caretaker likely caused serious abuse or physical injury, i.e. fractures, poisoning, suffocating, shooting, burns, bruises/welts, bite marks, choke marks, etc.
   - Parent/Caretaker, directly or indirectly, makes a believable threat to cause serious harm, i.e. kill, starve, lock out of home, etc.
   - Parent/Caretaker plans to retaliate against child for CPS investigation or disclosure of abuse or maltreatment.
   - Parent/Caretaker has used torture or physical force that bears no resemblance to reasonable discipline, or punished child beyond the duration of the child's endurance.
10. **Parent(s)/Caretaker(s) views, describes or acts toward the child(ren) in predominantly negative terms and/or has extremely unrealistic expectations of the child(ren).**
    - Describes child as evil, possessed, stupid, ugly or in some other demeaning or degrading manner.
    - Curses and/or repeatedly puts child down.
    - Scapegoats a particular child in the family.
    - Expects a child to perform or act in a way that is impossible or improbable for the child's age (i.e. babies and young children expected not to cry, expected to be still for extended periods, be toilet trained or eat neatly).
11. **Child(ren)'s current whereabouts cannot be ascertained and/or there is reason to believe that the family is about to flee or refuses access to the child(ren).**
    - Family has previously fled in response to a CPS investigation.
    - Family has removed child from a hospital against medical advice.
    - Family has history of keeping child at home, away from peers, school, or others for extended periods.
    - Family could not be located despite appropriate diligent efforts.

12. **Child(ren) has been or is suspected of being sexually abused or exploited and the Parent(s)/Caretaker(s) is unable or unwilling to provide adequate protection of the child(ren).**
    - It appears that parent/caretaker has committed rape, sodomy or has had other sexual contact with child.
    - Child may have been forced or encouraged to sexually gratify caretaker or others, or engage in sexual performances or activities.
    - Access by possible or confirmed sexual abuser to child continues to exist.
    - Child may be sexually exploited online and parent(s)/caretaker(s) may take no action(s) to protect the child.
13. **The physical condition of the home is hazardous to the safety of children.**
    - Leaking gas from stove or heating unit.
    - Dangerous substances or objects accessible to children.
    - Peeling lead base paint accessible to young children.
    - Hot water/steam leaks from radiator or exposed electrical wiring.
    - No guards or open windows/broken/missing windows.
    - Health hazards such as exposed rotting garbage, food, human or animal waste throughout the living quarters.
    - Home hazards are easily accessible to children and would pose a danger to them if they are in contact with the hazard(s).
14. **Child(ren) expresses or exhibits fear of being in the home due to current behaviors of Parent(s)/Caretaker's or other persons living in, or frequenting the household.**
    - Child cries, cowers, cringes, trembles or otherwise exhibits fear in the presence of certain individuals or verbalizes such fear.
    - Child exhibits severe anxiety related to situation associated with a person(s) in the home, i.e. nightmares, insomnia.
    - Child reasonably expects retribution or retaliation from caretakers.
    - Child states that he/she is fearful of individual(s) in the home.
15. **Child(ren) has a positive toxicology for drugs and/or alcohol.** Child(ren) (0-6 mos.) is born with a positive toxicology for drugs and/or alcohol.
16. **Child(ren) has significant vulnerability, is developmentally delayed, or medically fragile (e.g. on Apnea Monitor) and the Parent(s)/ Caretaker(s) is unable and or unwilling to provide adequate care and/or protection of the child(ren).**
    - Child(ren) is required to be on a sleep apnea monitor, or to use other specialized medical equipment essential to their health and well-being, and the parent/caretaker is unable to unwilling to consistently and appropriately use or maintain the equipment.
    - Child(ren) has significant disabilities such as autism, Down Syndrome, hearing or visual impairment, cerebral palsy, etc., or other vulnerabilities, and the parent(s)/caretaker(s) is either unable or unwilling to provide care essential to needs of the child(ren)'s condition(s).

17. **Weapon noted in CPS report or found in home and Parent(s)/ Caretaker(s) is unable and/or unwilling to protect the child (ren) from potential harm.**
    - A firearm, such as a gun, rifle or pistol is in the home and may be used as a weapon.
    - A firearm and ammunition are accessible to child (ren).
    - A firearm is kept loaded and parent(s)/caretaker(s) are unwilling to separate the firearm and the ammunition.
18. **Criminal activity in the home negatively impacts Parent(s)/ Caretaker(s) ability to supervise, protect and/or care for the child(ren).**
    - Criminal behavior (e.g. drug production, trafficking, and prostitution) occurs in the presence of the child(ren).
    - The child(ren) is forced to commit a crime(s) or engage in criminal behavior.
    - Child(ren) exposed to dangerous substances used in the production or use of illegal drugs, e.g. Methamphetamines.
    - Child(ren) exposed to danger of harm from people with violent tendencies, criminal records, people under the influence of drugs.

4. Safety decision

The safety decision is a statement of the current safety status of the child(ren) and the actions that are needed to protect the child(ren) from immediate or impending danger of serious harm.

Immediate danger vs. impending danger

A child is in **immediate danger** when he/she is currently exposed to serious harm

A child is in **impending danger** when exposure to serious harm is emerging, about to happen, or is a reasonably foreseeable consequence in the near future of current circumstances.

In deciding whether a child is in immediate or impending danger, consider the following:

- The seriousness of the behaviors/circumstances reflected in the safety factor
- The number of safety factors present
- The degree of the child's vulnerability and need for protection; and
- The age of the child.

The decision takes into consideration the ability of the family to offset the identified safety factors. Are there any specific strengths or circumstances and/or family, neighborhood or community resources available that might lessen or mitigate the identified safety concerns for the child(ren)? Strengths and resources must be specifically identifiable or quantifiable. Unless there are mitigating strengths, resources or circumstances present that will directly support the parent's or caretaker's ability to address child safety needs within the home, protective safety interventions are required for those safety factors that pose an immediate or impending danger of serious harm.

CPS must use currently available information to select the safety decision that most accurately reflects case circumstances. The worker must choose from the following safety decisions.

Safety Decision 1: No Safety Factors were identified at this time. Based on currently available information, there is no child(ren) likely to be in immediate or impending danger of serious harm. No Safety Plan/Controlling Interventions are necessary at this time.

Safety Decision 2: Safety Factors exist, but do not rise to the level of immediate or impending danger of serious harm. No Safety Plan/Controlling Interventions are necessary at this time. However, identified Safety Factors have been/will be addressed with the Parent(s)/Caretaker(s) and reassessed.

Safety Decision 3: One or more Safety Factors are present that place the child(ren) in immediate or impending danger of serious harm. A Safety Plan is necessary and has been implemented/maintained through the actions of the Parent(s)/Caretaker(s) and/or either CPS or Child Welfare staff. The child(ren) will remain in the care of the Parent(s)/Caretaker(s).

Safety Decision 4: One or more Safety Factors are present that place the child(ren) in immediate or impending danger of serious harm. Removal to, or continued placement in, foster care or an alternative placement setting is necessary as a Controlling Intervention to protect the child(ren).

Safety Decision 5: One or more Safety Factors are present that place or may place the child(ren) in immediate or impending danger of serious harm, but Parent(s)/Caretaker(s) has refused access to the child(ren) or fled, or the child(ren)'s whereabouts are unknown.

E. CPS Risk Assessment Profile (RAP) and services

In New York State CPS practice, "risk" is defined as the likelihood that a child may be abused or maltreated in the future[9], while "safety" refers to whether there is immediate or impending danger of serious harm to a child's life or health.

Risk assessment must be employed by CPS when key case decisions are made concerning a child named in a child abuse or maltreatment report including, but not limited to:

- Determining whether it is immediately necessary to institute controlling interventions to provide for safety and protection of the child, such as home-based services or foster care
- Deciding whether an indicated case should be kept open for the provision of services
- Identify outcomes of interventions (e.g., behavior changes or changes in the family's conditions) that would reduce risk to the children
- Deciding whether there is a need to reassess a family's progress
- Determining whether it is appropriate to close the case [18 NYCRR 432.2(d)(1)]

1. The Risk Assessment Profile

The Risk Assessment Profile (RAP) is an evidence-based assessment instrument that classifies cases into four risk categories based upon the probability of future abuse or maltreatment. CPS workers must complete at least one RAP in CONNX during each CPS report investigation, regardless of whether the report is indicated or unfounded.

While there is no statewide requirement to complete a RAP in cases that are assigned to the FAR track, an individual LDSS may require CPS to complete a RAP for FAR reports, and the RAP is always available in CONNX in FAR cases. Whether they use the RAP or not, CPS must continually assess risk in FAR cases and are urged to make those assessments along with the family.

> ***Risk assessment in day care***
>
> The RAP is not used for CPS reports that are coded as "Day Care." This is because most of the elements evaluated in the RAP pertain to family interactions that are not applicable in day care settings. Furthermore, CPS cannot keep a day care case open after a determination for protective services. See **Chapter 7**, *Investigations in foster boarding homes and day care programs*.

CPS must complete a RAP prior to concluding each investigation but only after CPS has thoroughly assessed current safety and met the safety needs of the children. During the investigation, CPS should thoroughly gather and assess information regarding risk elements and document that information in the RAP. When all information has been entered, CONNX software generates the RAP risk rating, which indicates the level of future risk of child abuse or maltreatment within the family.

As an assessment tool, the RAP assists CPS and supervisors in deciding whether services are necessary to reduce the level of risk for children in the family. However, the RAP rating should not substitute for CPS's experience and expertise in evaluating family issues. There may be instances in which a RAP rating is low, but CPS identifies a serious need for services; and there may be instances in which the rating is high, but services may not address the underlying issues. CPS workers and supervisors should address each case on its merits.

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[9] New York State Child Protective Services Response Training Curriculum, Module 1, slide 69, Office of Children and Family Services.

The RAP directs CPS to consider numerous elements that can affect the risk to children. These factors are reflected in the risk elements evaluated in the RAP, and include, but are not limited to:

- Previous family history of abuse or maltreatment
- Previous history of out-of-home placement
- The presence of an infant in the home
- Current or recent problems with housing, financial resources, mental or physical health, alcohol or drugs
- History of threats or violence
- The parent's/caretaker's expectations of children and attitudes regarding children.

Key concepts and protocols for the RAP

The RAP requires CPS to identify the existence or absence of specific behaviors, conditions, or sets of circumstances that are defined for each specific risk element. Once the worker enters these into CONNX, software for the RAP calculates the level of risk, thus supporting the CPS's ability to act upon that information.

The CPS worker should assess each risk element based on a full range of possible indicators, and should not narrowly interpret the elements. Comments should be recorded for each risk element, as applicable, and should clearly describe the worker's basis for the selected response for each risk element.

The interaction of the family members' existing behaviors, conditions, or circumstances and the weighted values assigned to each risk element determine the level of risk within a family. Treatment of an existing behavior or condition does not negate the existence of that condition. For example, an adult caretaker may be enrolled in a 30-day alcohol rehabilitation program. Participation in the program does not automatically negate the fact that the caretaker is an alcoholic, even though he/she is currently in treatment and alcohol-free.

When all the risk elements have been assessed and the risk level (risk rating) has been calculated, the worker must decide whether services are warranted to reduce the likelihood of future child abuse or maltreatment within the family.

2. Risk rating and the provision of services

When there is a high or very high RAP risk rating, CPS should provide services to decrease the risk of subsequent abuse or maltreatment. If a risk rating is high or very high and the CPS decides not to open the case for services, a CPS worker must document the reasons why services are not being provided to the family.

Families that have a moderate or low RAP risk rating may not have service needs, or their needs may be appropriately met by services within the community (i.e., family, neighborhood or community resources available to the family) rather than by services provided by CPS.

See **Chapter 8**, *Service Provision and Development of a Family Assessment and Service Plan*, for more information about providing service.

An LDSS must make core preventive services available to a child/youth and his/her family when there is a danger that the child may be removed or separated from his/her family and services may prevent such removal or separation [18 NYCRR Part 423, 18 NYCRR 430.9 and SSL §409-a].

3. Risk rating and case determination

The risk level (risk rating) calculated with the RAP and the decision about whether to provide on-going services to the family are not directly linked to the investigation determination. An investigation may be unfounded even though the risk level within the family is high or very high, supporting the need for services. Conversely, an investigation may yield evidence supporting an indication even when the level of future risk is low.

There may be valid reasons to open a protective or preventive services case for a family with low or moderate risk. The RAP does not replace sound decision-making and casework judgment; it is an evidence-based assessment tool that supports decision-making by helping to identify and evaluate risk factors.

4. Referrals for early intervention services

Pursuant to federal requirements[10] and OCFS policy,[11] the LDSS must inform parents of children under the age of three who are subjects in an indicated report of child abuse or maltreatment about the Early Intervention Program and refer them to the county's Early Intervention Program. This program is a valuable resource for families with young children with disabling conditions. It is a voluntary, free program that determines whether an infant or toddler has a disabling condition, evaluates the child's needs for a range of early intervention services, and develops individualized family service plans to address such needs. While this referral is a requirement when a report is indicated, there is nothing to prevent CPS from making such a referral when a report is unfounded.

[10] Part C of the Individuals with Disabilities Act (20 U.S.C. 1431 et seq.) and Section 106(b)(2)(B)(xii) of the Child Abuse Prevention and Treatment Act (CAPTA).

[11] "Referrals of Young Children in Indicated CPS Cases to Early Intervention Services" (04-OCFS-LCM-04)

F. Interviews

1. Interviewing the source of the report

As part of a CPS investigation, CPS must contact the source of the report, unless the report is anonymous [18 NYCRR 432.2(b)(3)(ii)(b)]. The source's knowledge of, and relationship to, the situation can provide valuable information.

CPS should make efforts to contact the source, especially when the source is a mandated reporter, within 24 hours of receiving CPS report. This will help in determining whether the child is in immediate danger of serious harm. Deciding whether to contact the source before or after contacting the family should be based on the nature of the allegations, the apparent need to contact the child or subject immediately, how much clarification is needed concerning the report itself, and the availability of the source.

Mandated reporters should provide the SCR with their contact information. Sometimes the mandated reporter will only provide the SCR with the contact information related to his or her employment. This can affect the ability of CPS to contact the mandated reporter before contacting the family.

CPS workers need not limit their contact with mandated reporters to the initial stages of an investigation. Mandated reporters (e.g., doctors, teachers, and police officers) and other people in the facilities where they work are often important sources of information with whom CPS should engage throughout the investigation to obtain a thorough assessment of the safety of and risk to the child.

It can be equally valuable to interview sources who are not mandated reporters (public reporters). Where identifying information is available, CPS should contact the public reporter, who may be able to provide CPS with useful information initially and throughout the life of the investigation regarding the ongoing interaction between the child and the subject of the report.

CPS should contact the source to:

- Clarify information contained in the report and to enhance the caseworker's understanding of the situation
- Obtain additional information about the child(ren), his/her condition, whereabouts, safety, etc.
- Assist the caseworker in establishing a helpful relationship with the family
- Clarify the source's view of the role and purpose of CPS
- Encourage ongoing communication between the source and CPS
- Encourage mandated reporters to complete form LDSS-2221-A, if they have not already done so.

A mandated reporter should retain a copy of the LDSS-2221-A for his/her records. CPS should advise the mandated reporter that the SCR report and CPS information are confidential and that, consistent with the spirit of the law, the mandated reporter may want to be careful about disclosing information in the report to anyone other than CPS and other sources of the report. Upon receiving the LDSS-2221-A, CPS should note it in the progress notes and include the form in the case record.

When interviewing a source, CPS should inform that person that the identity of the source is confidential under the law, and CPS should explain what that means, including the following.

CPS may not reveal the identity of the source of the report without the source's express written permission. However, in certain circumstances (e.g., court orders, requests from law enforcement), the identity of the source may be revealed. The identity of the source is never disclosed to the subject of the report or any other persons named in the report and is not included in any copies of the report provided to the subject or other person named in the report, unless the source gives written permission or a court orders release of the source information to the subject.

2. Interviewing the family

Although interviewing the subject(s), child(ren), and other household members is an ongoing process throughout the investigation, the initial interview with the family must be conducted as soon as possible after CPS receives a report from the SCR. Depending on the circumstances surrounding the report, the initial interview may be with either the parent(s) or the child(ren), or they may be seen together. CPS must try to quickly determine whether any children in the household may be in immediate danger of serious harm.

See **Section F.6,** *Uncooperative subjects,* for information on what to do if CPS is denied access to the child or home. Refer to **Section N,** *Domestic violence,* if domestic violence is suspected.

a. *Addressing Limited English Proficiency*

If the subject or other family members have been identified in the report or in another manner as having Limited English Proficiency (LEP), CPS must take reasonable actions to engage appropriate language services so the worker can serve the family effectively. CPS must be able to interview family members in a manner that allows for clear and accurate communication. Similarly, if anyone in the family is deaf, CPS must obtain a sign language interpreter or make other arrangements that will facilitate clear and accurate communication with that person. See **Chapter 1, Section H** of this manual for more information on Limited English Proficiency.

b. *Providing the notice of existence*

Under most circumstances, the CPS worker should give the initial notification letter (Notice of Existence) to the subject and other persons named in the report at the first interview. If the CPS worker does not hand deliver the notification(s) at an interview, the worker must mail the Notice of Existence to the subject and any other adult(s) named in the report, including the parents of children named in the report, within seven days of receipt of the report. The CPS worker should check that the subject understands the contents of the notification letter and explain any aspects of the information in it that the subject does not understand. CPS must document the manner in which the letter was delivered (hand-delivery or mail) and the date on which it was delivered. For more information, see **Chapter 12,** *Notifications*.

c. *Maintaining source confidentiality*

CPS must not disclose the identity of the person who made the report or the source of the report to the parents or other persons named in the report unless the source of the report has provided written authorization to release his or her name. Families should also not be informed that the source is anonymous. Without the written authorization of the source, CPS may not confirm or reveal the identity of the source of the report to the subject of the report, even if the source has informed the subject that they made the report or given verbal permission to CPS to disclose the identity. (See **Chapter 14, Section B.4,** *Mandatory reporter consent to release identifying information*.)

Conducting the first interview with the subject

At the first interview with parents or other persons legally responsible for the child[12] who are the subjects of CPS reports, CPS workers should describe to them the process and the focus of the investigation and what they can expect regarding the workers' contact with them during that process. The worker should clearly communicate that the investigation of the allegations contained in the report may be only one component of CPS's contact with the family. It is important to describe the entire investigation process, including CPS's authority to conduct the investigation.

During the interview, the worker should explain that CPS has a responsibility to:

- Focus on the safety of and risk to the child named in the report and any other children in the environment
- Conduct a thorough, ongoing assessment of the child's environment, which will include a wider range of focus and inquiry than the specifically alleged abuse or maltreatment
- Identify and factor relevant family strengths into the overall assessment, as well as the family members' perspectives of strengths and problems
- Provide an explanation of each allegation in the report and give the subject of the report should be given an opportunity to respond to the allegations
- Explain that if it is found that the children are at risk of future abuse or maltreatment, CPS will establish a service plan aimed at outcomes linked to those factors assessed to be causing risk of future abuse or maltreatment

The first interview with the family is the time for a CPS worker to initiate the process of family engagement. While the initial visit with a family is often difficult and stressful for the family, the CPS worker's initial approach may help mitigate those stresses and engage the family, resulting in a more cooperative and productive relationship. The first steps toward family engagement can include listening to and addressing issues that concern the family; sharing openly with the family about what to expect regarding such things as timelines, future collateral contacts, court issues, if applicable, and helping families with their needs.

The focus of the initial interview should also be on gathering information regarding the welfare of the children and on obtaining information needed to complete the initial safety assessment.

The CPS worker also may begin to gather background information necessary to understand the family's issues, assess risk, determine the need for services during the investigation, and complete the RAP. Collecting information about potential risk factors early in the investigation is necessary both to monitor safety and risk and to obtain sufficient information with which to complete the RAP. The RAP is most effective and useful when accurate and complete information has been entered.

The worker must make an effort to observe the condition of the home, interactions between adults and children, and interactions between the adults. The worker may share his/her tentative impressions with the family after the first contact, if it is appropriate, given the nature of the situation and the information available at the time. It is good practice to conclude the

[12] Throughout this section, when the term parent is used, it is intended to also include persons legally responsible for the care of the child (PLR), where there is such a person in place of or in addition to a parent.

initial interview with a "road map," describing to family members the steps that CPS is likely to take in the coming days and weeks. The worker should not provide that information, however, if he/she reasonably believes that revealing such information will be detrimental to the progress of the investigation or to the safety or well-being of anyone involved in the investigative process.

When working with the family, it is important to begin inquiring about any additional family, relatives, close friends or others who could be a potential resource or support. These resources could help with child care, connecting the parent/caretaker to community resources, offering emotional support, or in the event of imminent danger to a child, they might be an appropriate placement resource for the child(ren).

Obtaining Criminal History Records

[SSL 424(6)(c)] CPS units of LDSSs in New York State can apply to be able to obtain criminal history record information of persons eighteen years of age or older who are named in a CPS report or who reside in the residence of a child named in a CPS report. CPS can use this information to assess caseworker safety prior to visiting a home for an investigation, and can also use it as part of the assessments of safety and risk for children named in a report.

To access the secure website where such information is available, an LDSS must first apply to the Division of Criminal Justice Services (DCJS) and obtain their approval (See the OCFS policy, 09-OCFS-LCM-10, *Child Protective Services Access to Criminal History Records,* for information on how an LDSS applies, requirements for users, and considerations regarding the use of the information found.) Any LDSS may apply to use DCJS's electronic system to obtain information, but no LDSS is required to do so.

The criminal history records information obtained is not based on fingerprints. It is obtained by matching identifying information about an individual with criminal history records held by DCJS. The completeness of the information is therefore limited because, without the use of a *unique* identifier, there is no assurance that the information yielded pertains to the individual for whom the searcher is requesting information. *The information is confidential and may not be shared, except when necessary for child protective purposes*. CPS are advised to try to corroborate information they obtain from criminal history record checks through other sources, such as law enforcement agencies, courts, family members, and/or other collateral contacts. They may be able to share this information obtained from other sources more freely.

Nevertheless, accessing the DCJS database provides one more piece of information, which can be used for several purposes. At the start of the investigation, information can alert investigators to the possibility that someone in the home may be dangerous, and they may plan accordingly. The information can also alert CPS to possible concerns regarding the immediate safety of children and can be used in assessing future risk. Criminal history record information obtained through this method may also be used to support a determination to indicate a subject, but cannot be used as the only evidence on which to base that determination unless that information has been verified through another source.

3. Interviews with children

Any child named in a new or subsequent report should be seen face-to-face before closing the investigation. Generally, the victim child and every other child in the household should be seen and interviewed, when competent to do so. All children in the household should be included in the case composition.

Children should be interviewed in a sensitive manner, due to the fact that they may have experienced trauma, and efforts should be made to minimize any additional trauma.

In some cases, interviewing a child will not provide useful information about the condition of the child, the safety of the child, or the risk to that child (e.g. the child is too young to effectively communicate). In those situations, it is not necessary to interview the child, but it is nevertheless important to interact with and observe the child, because the investigator can still obtain information through that interaction.

Each child named in a CPS report must be screened to determine if the child is a sex trafficking victim. Using the CONNX screen labeled "Sex Trafficking Screening," the worker must document that the screening was done and provide the results of the screening. If a child is determined to be a sex trafficking victim, the LDSS must report the victimization to law enforcement immediately, but never later than 24 hours after the child is identified as a victim. See **Section M.2** of this chapter, *Child Welfare requirement to screen for sex trafficking,* for detailed information on sex trafficking screening.

a. *Determining who is present during a child interview*

It is good practice to interview the child outside the presence of the subject of the report or the parent, when the parent is not the subject, although this option may not be available in every case. Interviewing children during the investigative phase without parents or other people present can serve several purposes, such as:

- Enabling the child to provide his/her impressions free from the influence the child may feel from another person, particularly a person who may be an interested party
- Assisting the worker in assessing the child's level of safety and determining whether the child may be in imminent danger
- Providing first-hand information about whether there was abuse or maltreatment and, if so, who perpetrated it
- Providing useful information for assessing the risk of future abuse or maltreatment

> ***Domestic violence***
>
> When responding to a report that suggests there is domestic violence involved, it is best practice to speak with the victim parent alone and away from the subject, whenever possible, *prior to* interviewing the children. See **Section I,** *CPS investigation progress notes***,** of this chapter for more information on addressing cases with domestic violence.

CPS workers are not prohibited from speaking with children prior to speaking with parents, or from speaking to children without the permission of their parents. CPS staff and supervisors must determine when this is appropriate, with the understanding that it may result in increased polarization between CPS and the parent(s). It may be preferable to speak with the child first when the allegations are particularly serious, there is a preliminary

assessment that the child may be in imminent danger, or if there is reason to believe that the child may be fearful of speaking honestly in the presence of the parent(s). These interviews can potentially occur at any location, but will most likely take place in the setting where the child is at the time in which CPS initiates the investigation (e.g., school or child care setting).

Other than when there are allegations of sex abuse or severe physical abuse, it is impossible to be prescriptive about when a child should be interviewed separately from the subject or parent. This decision should be made on a case-by-case basis by the CPS worker with the assistance of the worker's supervisor. The following factors should be weighed in making this decision:

- Is there reason to be concerned about the child's immediate or short term safety?
- How serious are the allegations? Do they appear to be credible?
- Has previous involvement or the initial contact with the family led CPS to believe that the parent(s) is failing to be forthcoming with information, or is being dishonest?
- If the parent(s) was present at the initial contact with the child, did the child seem uneasy, fearful, silent, or at conflict with the parent(s)?
- Is the parent(s) mentally unstable or enraged? Is there a likelihood that the parent(s) might attempt to retaliate against the child because of a perception that the child revealed something? Can the child be immediately protected from such retaliation?
- Is the child willing to be interviewed?

The worker should consider whether to allow "third parties" to participate when the child is interviewed apart from his/her parent(s). This might be helpful if it would put the child more at ease. Such individuals could include, but are not limited to, an older sibling, a teacher, or a trusted relative. There also are instances in which an investigation is conducted by a multi-disciplinary team (MDT), or there is a joint investigation by CPS and an authorized law enforcement agency. In these cases, CPS and a law enforcement officer often will jointly interview children, and other professionals may participate as well (See **Section F,** *Interviews*.) These interviews often take place at a Child Advocacy Center.

b. *Location of the interview with the child*

Most interviews with children will, by necessity, occur in the child's home. In most instances, in-home interviews occur after initial contact with the parent(s). During the interview with the parent(s), the worker should inform the parent of the need to speak privately with the child. The worker should stress that this is a normal part of the CPS process, and that it is not done because there is a reason to distrust the parent's statements. It is done because it allows CPS to collect information from all potentially knowledgeable persons, which is necessary for conducting a complete investigation of the allegations in the report, as required by law. CPS should ask the parent(s) to help arrange for a private location in the home where the child(ren) can be interviewed. When the report contains allegations that are considered serious, it may be preferable to interview the child at a neutral and safe location, such as a Child Advocacy Center.

New York State law aims to minimize the number of times that a child victim is required to recite traumatic events by requiring that, wherever there is a Multidisciplinary Team (MDT) (See **Section L.5,** *Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs)*), the MDT should be used for the investigation and prosecution of child abuse cases [Executive Law §642-a(1)]. The MDT, CPS, and other partners in the MDT should develop protocols for

conducting interviews of children that allow all the interested parties to be involved in the interview, observe the interview, or have ready access to the results of the interview [SSL §423(6)].

It may not be necessary for CPS to interview a child in situations where other investigative agencies, such as the district attorney's office or law enforcement, have already conducted an interview. In some instances, another interview could cause additional trauma to the child. Whenever possible, CPS should sit in on or witness these interviews.

Where there is a CAC available to CPS and law enforcement, the CAC facility should provide an appropriate atmosphere for conducting sensitive interviews [SSL §423-a]. CPS should always consider using this facility for interviewing children, particularly in cases in of sexual abuse or other severe abuse. Joint investigation agreements between law enforcement and local CPS should address this subject.

See **Section L.5,** *Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs),* for more information about the role of MDTs and CACs in CPS investigations.

c. *Interviewing the child at school*

It may be advisable to interview children at school in cases where:

- Information from the source establishes a need to confirm that the child will be safe when he/she returns home
- There are allegations of sex abuse or other serious abuse
- There are other reasons for making use of a separate interview setting (e.g., the child needs to talk privately with CPS or the child is not willing to disclose information when the subject is nearby)

The school setting may also provide an opportunity for CPS to observe and/or photograph a child. This contact can be made either before or after an interview with the parents.

Interviewing children in the school setting requires ongoing cooperation and dialogue with school authorities so that both CPS and the school authorities understand each other's policies, responsibilities, and procedures. If school officials either are not aware of New York State Education Department (NYSED) policies or they provide little cooperation with the local CPS regarding interviewing children for CPS investigations, the matter should be referred by appropriate agency personnel to the NYSED Office of Early, Middle, Secondary Education, Bureau of Pupil Services.

The circumstances or allegations that *may* prompt a decision to interview a child at school include, but are not limited to:

- Bruises inflicted by parents
- Unusual punishments
- Unattended illness
- Child fearful of returning home
- Sexual abuse

It should be kept in mind, however, that interviewing a child in school may have negative consequences, such as:

- Disrupting the child's school routine

- Increased attention to an allegation about a problem at home which, in fact, may not be a problem or may not be sufficiently significant to warrant extraordinary attention
- Alienation of the parent(s) to the extent that communication with CPS, and possibly with school personnel, will become extremely guarded or cut off completely.

Departments, boards, bureaus or other agencies of the state, or any of its political subdivisions are required to provide OCFS and LDSSs with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities [SSL §425(1)]. CPS caseworker should therefore expect the cooperation of most governmental collateral contacts throughout the CPS process.

NYSED policy

New York State Education Department (NYSED) policy allows CPS to interview children at school, whether or not the school is the source of the report. NYSED and OCFS agree that the presence of a school official during the interview is desirable, because it often lessens the child's fear of discussing a threatening home situation with the CPS caseworker. Including a school official also may facilitate involving the school in the initial formation of a plan of protection for the child and a treatment plan for the family.

A school official should not be present during the interview, however, if it is determined by CPS, and agreed upon by the school official, that the presence of a school official would be detrimental to the child's emotional condition, or the child expressly indicates that he/she would prefer that a school representative not be present.

If a school official and CPS disagree about whether a school representative should be present at the interview, the interview should take place at an alternative location, such as a Child Advocacy Center.

Regardless of the location, the CPS worker must provide a comfortable interview setting. The worker should establish rapport with the child by asking him/her some general questions about him/herself and by explaining the purpose of the interview in a manner appropriate to the child's ability to understand. Throughout the interview, CPS caseworker should ask questions in a non-judgmental and supportive way to elicit information concerning the allegations. The child needs to be reassured that he/she is not bad, is not in trouble, and is not at fault. At the end of the interview, the CPS worker should explain to the child what will happen next.

Interviewing a child at school without parental consent

Children who are alleged to have been abused or maltreated can be interviewed at school without parental permission in appropriate circumstances. The first duty of the CPS in conducting an investigation is to assess the child's safety and, as noted above, it may be advisable to interview the child at school without parental permission.

A CPS worker or an MDT member can interview a child in a public school without the consent of a parent if the CPS or MDT member has either probable cause or good reason to believe that child abuse or maltreatment occurred.[13]

This leads to the question of what constitutes a reasonable basis to believe that questioning the child without parental permission is necessary, or what constitutes good reason to

[13] "Phillips v. Orange County – Considerations for Child Protective Services Investigations" (16-OCFS-LCM-05)

believe that child abuse or maltreatment occurred. Determining whether the child may be interviewed at school without parental permission will involve an evaluation of several factors, such as:

- *Whether a parent is the subject of the report.* The primary reason to interview a child at school is to have the opportunity to interview the child outside the presence of the parents where a parent is a subject of the report. If the subject of the report is not a parent, there may be less need to interview the child outside the direct influence of the parent.
- *The apparent reliability of the source of the report and/or the information in the report.* If the report is from (a) a source who does not have direct knowledge of the alleged abuse or maltreatment, (b) an anonymous source, or (c) a source who on the face of the report may have a motivation to fabricate or exaggerate information, additional consideration should be given to the reliability of the information in the report in determining whether interviewing the child at school without parental permission is appropriate.
- *Whether the source of the report is a mandated reporter.* Many mandated reporters have received some level of training in their legal responsibilities, and by the nature of their positions are more often in a position to observe signs of possible abuse and maltreatment than are members of the general public. The indication rates for reports from mandated reporters are historically higher than the indication rates for reports from non-mandated reporters. Accordingly, a report from a mandated reporter could be considered more reliable than a report from a non-mandated reporter.
- *Other factors, depending on the circumstances of the report.* The view of OCFS is that if there is a question of the safety of a child, and interviewing a child at school without parental permission is deemed necessary to protect the safety of a child, CPS should conduct the interview at school without parental permission. A question about the safety of the child would constitute reasonable cause to believe that there may have been child abuse or maltreatment.

4. Interviews with collateral contacts

It is a good practice to ask subjects for the names of individuals who could help CPS determine the validity of the allegations stated in the report and also provide information concerning the child's safety and risk. This will enable CPS to better assess both whether the child is in immediate danger and whether there is risk of future abuse or maltreatment. It also may be helpful to ask the source of the report for suggestions regarding collateral contacts.

Collateral contacts can be made through letters, telephone calls, and personal interviews. CPS should make contacts with relatives, neighbors, physicians, school personnel, social service agencies, law enforcement agencies, hospitals, and any others who might be able to clarify and supplement the information contained in the report from the SCR and provide a better understanding of the child's condition and/or the family's functioning. This information should be gathered throughout the investigation, as circumstances require.

When appropriate, CPS should involve subjects in the process of gathering information from collateral contacts. It can be especially helpful to ask the subject or other family members for the names of people who know the most about the family's daily life. While subjects and children

have a right to confidentiality, CPS also has an obligation to conduct a thorough and complete investigation (See **Chapter 13,** *Confidentiality and legal sealing*.)

In general, CPS workers should attempt to obtain *signed* consent forms (i.e., release of information) from parents before securing information from collateral contacts who will be contacted because of their professional positions, such as medical providers. In addition, it is usually good practice to inform parents that their relatives, neighbors, and other non-professional sources may be contacted, and to seek the parents' understanding, if not agreement.

If the subject does not provide consent, CPS nevertheless has an obligation to attempt to secure information from collateral sources thought to have relevant information. Relevant information is any information that will inform decision-making regarding the determination of the report, child safety, and child risk.

Given requirements regarding the confidentiality of information in CPS reports [SSL §422(4) and 18 NYCRR 432.3(i)], CPS must not reveal information from the report to collateral sources. However, it is necessary to provide the collateral source with general information to obtain the source's cooperation (e.g., that CPS works in CPS and is looking for information regarding X person or family due to some concerns about child safety and well-being.)

The Social Services Law requires that "departments, boards, bureaus or other agencies of the state, or any of its political subdivisions" provide New York State Office of Children and Family Services and local departments of social services with such assistance and data as are necessary to enable them to fulfill their child protective services responsibilities SSL §425.

CPS should therefore expect the cooperation of most governmental collateral contacts throughout CPS process.

5. Follow-up contacts with household members

Throughout the duration of the investigation of a report of suspected child abuse or maltreatment, the CPS worker should conduct regular visits, particularly in the home, to:

- Assess any changes in the environment
- Assess the child's condition
- Assess the family's functioning
- Assess the viability of any safety plan that was developed and/or put in place
- Assess the risk of future abuse or maltreatment through the collection of sufficient information to adequately complete the Risk Assessment Profile, as well as identify new safety issues
- Better understand the family's perspective regarding its functioning and needs
- Learn the strengths of the family members as individuals and as a unit

The circumstances of the case will help CPS to determine the appropriate frequency of the visits and whether they will be announced or unannounced. Regardless, CPS should in every case attempt to schedule some home visits at a time when the children living in the home can be observed. This is especially crucial when there are preschool-age children who may not be seen regularly by professionals or others who might recognize if the child was being abused or maltreated. Regulations require that, before making a determination, the CPS make a minimum of one home visit with face-to-face contact with subjects and other persons named in the report [18 NYCRR 432.2(b)(3)(iii)(a)].

6. Uncooperative subjects[14]

Although the law requires CPS to evaluate the child's living environment of the child and to assess the current safety and the risk of future abuse and maltreatment to the child and other children in the home, the law does not require the parents to consent to a home visit or to permit access to their child. In some cases, CPS workers investigating reports of child abuse or maltreatment are unable to obtain the cooperation of the subjects and are denied access to the home and/or access to the child.

When this occurs, the worker must assess whether the denial of access creates a sufficient potential danger to the child to necessitate seeking a court order to obtain access to the child or the home or to compel the production of the child, or to take other emergency actions. A decision to seek a court order *must be made no later than 24 hours after being denied access*, and must be made in consultation with the CPS worker's supervisor and with legal staff.

a. *Pre-petition court orders for access*

The law enables CPS to obtain a court order from Family Court for access to a child or the home in certain instances when the worker is denied access to a named child, denied entry to the child's home, denied access to other children believed to be living in the home but not named in CPS report, or if the child is not found on the premises [SSL §424(6-a and 6-b)]. The law provides for two types of orders, both of which can be issued only if there is no existing abuse or neglect (Article 10) petition before the court applicable to the family [FCA §1034(2)]. The court applies a different standard in determining whether to issue each of these types of orders:

- An order mandating access to a *child* (or children) named in a CPS report or living in the same home as a child named in the report
- If access is insufficient to be able to determine safety, or if a child cannot be located, CPS staff must provide evidence that there is a "*reasonable cause to suspect that a child or children's life or health may be in danger*."
- An order mandating access to the *home* of a child or children named in a CPS report
- If CPS staff has been denied access to the home of the child to evaluate the home environment, CPS must provide evidence that there is "*probable cause to believe that an abused or neglected child may be found on the premises.*"

In order to obtain a court order to obtain access to a child or to a child's home, a CPS worker must have immediately advised the parent or person legally responsible for the child's care or person with whom the child is residing that CPS may contact the family court seek an immediate court order to obtain access to the home and/or to the child or children without further notice. In addition, the CPS worker must have advised the person that if they continue to deny access to the child sufficient to allow the CPS worker to determine the child's safety and CPS seeks a court order, while the request is being made to the court, law enforcement may be contacted and, if contacted, will respond and remain where the child or children are or are believed to be.

[14] "Obtaining Court Orders When Denied Access in CPS Investigations" (07-OCFS-ADM-07)

Any court order issued should be tailored to the needs of the investigation and the conditions of the family. The order may:

- Require the parent or person legally responsible to produce the child or children at a specific site, which may be a child advocacy center, for an interview of the child or children and for observation of the condition of the child outside the presence of the parent or other legally responsible person;
- Require the parent or person legally responsible to produce a child or children to a specific person for interview and for observation of the condition of the child outside of the presence of the parent or other legally responsible person
- Authorize the person(s) conducting CPS investigation to enter the home in order to determine whether a child or children named in a CPS report are present
- Authorize the CPS to conduct a home visit and evaluate the home environment of the child or children.

b. *Protocols when considering seeking a court order for access*

When a CPS worker conducting an investigation is denied access to a child or children or to the home of a child named in a report, immediate consideration should be given to whether the situation warrants seeking a court order to obtain the needed access. The CPS should take the following steps. [SSL 424.6-a and 424.6-b; 18 NYCRR 432.2(b)(3)(ii)(a)]:

1. *Immediately* advise the adult who has denied access that CPS may seek to immediately obtain a court order to gain access. This can be done without prior consultation, as it does not commit CPS to a course of action.
2. *Immediately* notify the adult who has denied access that law enforcement may be called to the site and, if called, will remain where the child or children are believed to be present while the request for a court order is made. This can be done without prior consultation, as it does not commit CPS to a course of action.
3. Determine whether a court order is needed. This should be based on a review of all evidence. Keep in mind that, in deciding whether to issue an order, the *court* must consider, at a minimum [FCA §1034(2)(d)]:
    - The nature and seriousness of the allegations made in CPS report
    - The age and vulnerability of the child or children
    - The potential harm to the child or children if a full investigation is not completed
    - The relationship of the source of the report to the family, including the source's ability to observe that which has been alleged
    - The child protective or criminal history, if any, of the family
4. Determine the level and likelihood of possible harm to children. CPS must evaluate whether potential safety concerns for children are serious enough to warrant seeking a court order. Should CPS bring an application for a court order before the Family Court, the court will apply different standards of proof for access to the child and access to the home.
5. Act quickly. The request for a court order must be made no more than 24 hours after their refusal.

6. Consult with a supervisor. OCFS regulations require that the decision to seek a court order must be made, at a minimum, in consultation with a CPS supervisor [18 NYCRR 432.2(b)(3)(ii)(a)].
7. Consult with a lawyer, if possible. OCFS regulations require that, when they have decided to seek a court order, CPS staff must consult, whenever possible, with a member of the legal staff who represents CPS [18 NYCRR 432.2(b)(3)(ii)(a)].

If the CPS makes the decision to seek a court order to obtain access to the child(ren) and/or home, it should proceed with the following actions:

1. Determine whether to call in law enforcement. This may depend on the assessment of the possibility of immediate danger to one or more children, the perceived likelihood that the child might be moved while CPS is seeking the court order, or any other factor that CPS considers pertinent. The law requires law enforcement to respond to any such request and to remain where the children are believed to be while CPS requests the court order [SSL §§424(6-a and 6-b)].
2. Determine the appropriate remedy to request of the court, remembering there is a requirement for the "least intrusive action" [FCA §1034(2)(e)].
3. Request the court order from a Family Court. CPS should use OCA Form 10-29a to make the request. If CPS needs to make an off-hour request and no judge is available, CPS should call 1-800-430-8457 to reach an OCA employee who will conference in the on-call judge. CPS should not call a local judge.
4. Keep progress notes of all actions taken.
5. Complete a follow-up report to Family Court. CPS must prepare a report within three business days of the court order issuance, detailing the findings of the investigation and any actions taken regarding the children named in the court order. OCA form 10-29b is used for this report. OCA child protective forms can be accessed at https://www.nycourts.gov/forms/familycourt/childprotective.shtml.

If a determination is made that no special actions are necessary, the supervisor, CPS worker and legal staff (when involved in the consultation) should discuss and document the reason behind the decision and the required "next steps" in the investigation. They should also discuss and clarify what case circumstances should prompt the CPS worker to raise the issue of outside intervention with his/her supervisor or legal staff again.

Regardless of the outcome of this assessment, CPS must still proceed with the investigation. Over the course of the investigation, if access to the child or the child's environment is ever again denied or confounded, there should be a reassessment of the need to seek a court order.

If the CPS does not request or obtain a court order, CPS workers should persist in their attempts to gain cooperation from the reported family. Repeat visits, telephone calls or explanatory letters from CPS may be instrumental in achieving future access and cooperation.

G. Obtaining information about physical injuries and health

1. Observation of physical injuries

When a CPS worker observes injuries on a child's body, the worker should document their size, location on the body, shape, and configuration.

If the injuries are severe, or potentially serious, or if emergency medical attention is indicated, the child should be seen by a doctor and the results of that examination should be documented (See **Section G.2,** *Medical examinations and evaluations*.) By law, a child cannot consent to a medical examination of himself or herself unless the child is married or a parent [Public Health Law 2504]. Medical consent of the child, parent, or other authorized person is not required in emergency situations, but a non-emergency medical examination requires parental consent. An LDSS commissioner may give consent for medical, dental, health, or hospital services for any child who has been found by the Family Court to be an abused or neglected child, has been taken into or kept in protective custody, has been removed from his/her residence, or has been placed into the custody of the LDSS commissioner.

Photographs of visible physical injuries should be taken or arranged for whenever necessary and appropriate (See **Section G.3**, *Photographs*).

In cases of suspected sexual abuse, a medical care professional (i.e. physician, nurse, physician's assistant, nurse practitioner) should be the only person to conduct an internal examination.

Alleged injuries to the child must be both observed and photographed. The CPS worker should do this in a comforting, non-threatening way. Even if photographs are taken of the injuries, the progress notes must include a description of the injuries that were observed. CPS must clearly describe the location on the body, size, shape, color, and any other noteworthy characteristics of the injuries Photographs of an injury that were taken or obtained by CPS must be included in the permanent record of the report. (See **Section G.3**, *Photographs.*)

a. *Observation of normally clothed areas of a child's body*

When a CPS receives allegations that a child has injuries on those parts of his or her body normally covered by clothing (usually the torso/trunk and upper thighs), then it must consider whether to have the child undress to allow for a visual confirmation of any injuries.

Depending on the allegations, this action may be necessary to enable CPS to fulfill its statutory mandate to determine if the child is in immediate danger and/or to reach a determination about the accuracy of the allegations of injury. CPS workers are encouraged to confer with a supervisor whenever conducting an investigation of a report in which there are allegations of injuries to areas of the child's body that are normally covered by clothing.

The policy considerations discussed below are not intended to affect the usual manner in which a CPS worker assesses a child's condition, the home environment, or the family's functioning. In most cases, the CPS worker observes the child's overall physical appearance, observing those areas of the body not normally clothed (e.g., face, arms, or neck) as part of assessing the current safety of the child and the risk of future abuse or maltreatment, and then documents the findings.

b. *Is it necessary to observe normally clothed areas of the child's body?*

Consideration of the following factors may help caseworkers determine whether it is reasonable to observe normally clothed parts of a child's body. All of these factors should be considered and weighed together when deciding whether a physical inspection is necessary.

- Do the case circumstances or history indicate that observation of the clothed part(s) of the child's body is required to determine whether the child is in imminent danger of harm?
- Is it necessary to immediately see and document the injuries to decide whether the child needs immediate protection? Such a visual inspection may help the caseworker reach a conclusion about the child's immediate safety.
- Does the allegation that the child has bruises or injuries on a clothed part of the body seem to be credible? Whenever possible, the credibility of the allegations should be determined through discussions with the source or collateral contacts, or from statements by the child indicating that he or she is being abused. The credibility of the allegations may be enhanced if the explanation provided by the subject or parent concerning the allegations is inadequate, implausible, or controverted by a medical practitioner who has previously seen the child.
- Are there other signs of physical harm to a child, such as visible marks on uncovered areas of the child's body, or find other evidence of violence occurring in the home that may affect CPS's assessment of the credibility of the allegation?
- Does the child object to or indicate great discomfort regarding the visual inspection of his or her clothed areas? How much weight should be given to such a reaction in assessing whether to proceed with an inspection?
- Does the child seem embarrassed by the plan to disrobe? Might the child's upbringing or cultural background cause the child to become particularly disturbed by having to disrobe in front of a caseworker, medical professional, or other available objective party? Or, is the child simply embarrassed by having bruises or other injuries, and doesn't want them observed?
- Is the child perhaps trying to protect his/her parent or, by extension, protecting him/herself from future physical punishment)? Does the child flinch or cower in the presence of the alleged subject? Does the child offer other nonverbal indications that abuse or maltreatment is likely to have taken place?
- Although the allegation(s) relate to the child having bruises or injuries on an area of the body normally covered by clothing, does the worker have reasonable cause to believe that the child is in imminent danger without having the child physically inspected?

c. *Parent/child consent for observation of a child's body*

Once it has been determined that a visual inspection of a normally clothed portion of a child's body is advisable under the case circumstances, the worker must next consider when, where, and how the inspection should occur. An initial step in this process is deciding whether to seek a parent's consent to the inspection of the child. This decision should be guided by the case circumstances.

In most instances (when there is no suspicion of imminent danger, the child does not seem to need immediate protection, and it is possible to communicate with the parent), the worker

should ask the parent's consent before proceeding with a visual observation of the child's body. Requesting consent to observe the child is more likely to limit the adversarial repercussions of this necessary, but intrusive, investigative function. In most such situations, it is better to try to work cooperatively with the parent(s) than to compel behaviors. Also, as a practical matter, parental consent is necessary unless CPS has taken protective custody of the child.

If the parent gives his/her consent, the parent should be given options for how the inspection will be done. Such options may include:

- The parent takes the child to a physician for a physical examination (See **Section G.2** of this chapter, *Medical examinations and evaluations*)
- The parent gives CPS permission to take a child to a physician for a physical examination (See **Section G.2**, *Medical examinations and evaluations*
- The parent unclothes the child and remains present while the worker observes the child
- A school nurse inspects the child

Generally, if there is no concern that the child is in immediate danger, CPS should strongly consider waiting until the child can be seen by a medical professional who can observe and assess any injuries.

There are also circumstances where good practice dictates that a parent's consent be sought, but where CPS is unable to obtain consent or to obtain it in a timely manner. It is OCFS's position that a parent's inability (e.g., he/she cannot be located) or unwillingness to provide consent should not necessarily prevent an inspection from occurring.

CPS should *not* seek a parent's consent for a visual inspection of the child's body if there is reason to believe that the child is in imminent danger of abuse or maltreatment, and especially should not seek consent if there is reason to believe that informing the parent of the existence of the report and seeking the parent's consent for an inspection may create or exacerbate imminent danger for the child. This situation is more likely to exist when a child is in a school, day care, or other out-of-home location.

In circumstances where it is not good practice to seek a parent's consent or where a parent's consent was sought but not obtained, it may still be possible for CPS to conduct a visual inspection. *A child who has the capacity to give voluntary and knowledgeable consent may consent to the visual inspection.* Any child who has the capacity to give consent should be asked to give his or her consent, regardless of whether the parent has given consent.

"Capacity to consent" refers in such a case to an individual's ability, determined without regard to the to the individual's age, to understand and appreciate the nature and consequences of a proposed visual observation of the body and to make an informed decision concerning the visual inspection. If a child with the capacity to give voluntary and knowledgeable consent refuses to give consent, the inspection should not occur unless the child is put in protective custody pursuant to the provisions of Article 10 of the Family Court Act.

A child who does not have the capacity to give voluntary and knowledgeable consent to a visual inspection may nevertheless have a portion of his/her body inspected without parental consent if it is believed that the child is in imminent danger or would be in imminent danger if parental consent was requested. An example of such a circumstance would be a seriously bruised toddler in a day care setting, where there is reason to believe that the parent caused the injury.

Where a child's body has been inspected without the consent of the parent, CPS must notify the parent about the inspection as soon as is reasonably possible.

d. *Conducting an observation of normally clothed areas of a child' body*

To minimize any potential negative impact on the child, CPS should consider engaging in the following actions when observing normally clothed parts of a child's body:

- Before the observation, CPS should explain to the child what will be happening and why, and ask for the child's cooperation. The worker must recognize and respect that children's attitudes may vary greatly due to their age, maturity, personality and culture, and children have differing expectations of privacy. Generally, the older and more mature the child, the more deference CPS should afford to the child's expectation of privacy.
- The visual observation should be conducted in an environment that supports the child's privacy and dignity, such as a school nurse's office. By-passers should not be able to observe what is occurring and no intruders should be allowed into the room during the observation.
- Usually, the observation of the child's body is conducted by CPS. However, CPS should try to present the child with options regarding with whom he or she would be most comfortable performing the observation. The options presented could include CPS, school nurse, family physician, or another medical provider whom CPS has found reliable. The child's choice must be respected whenever practical and consistent with the responsibilities of CPS.
- Except for very young children (under the age of 5), CPS who conducts the observation should be the same gender as the child.
- The parent(s) should be given a reasonable opportunity to be present when a physical inspection is conducted, unless the parent poses a threat to the health or safety of the child.
- The number of persons located in the room during an observation should be kept at a minimum. When possible, a support person of the child's choosing should be present during an observation of normally clothed areas of the child's body.
- If the child is unable to undress himself or herself, CPS should ask the parent to undress the child.

2. Medical examinations and evaluations

A complete medical examination is sometimes an essential component of the investigative process for cases of suspected child abuse or maltreatment. A medical examination can:

- help to confirm whether there are non-accidental injuries or substantial physical neglect;
- provide the basis for planning treatment for injuries or for the neglected state of the child; and
- identify if there are medical problems of which CPS was unaware.

When CPS suspects that a child named in a report has been physically abused or neglected, CPS should evaluate whether a medical exam is needed. If there are allegations or observations by CPS that suggest a failure to thrive or lack of necessary medical care, it may be necessary to obtain a medical assessment to determine if either of those conditions

exist. if the worker finds the child has been injured to an extent that requires immediate medical treatment, then the worker should immediately make arrangements for the child to be treated. CPS should consider if a child has any of the following conditions when determining if immediate attention is necessary:

- Any type of fracture in a child
- Head Injuries
- Serious Infections
- Serious Burns
- Severe Bruises/Lacerations/Welts
- Bites
- Sexual Abuse
- Failure to Thrive
- Malnutrition
- Internal Injuries
- Unattended medical problems, for example, high fever, difficulty in breathing

If the worker believes that a child named in a report needs immediate medical care, the worker must discuss this assessment with the child's parent. CPS should emphasize that it is imperative for the parent to act immediately and should also offer his or her assistance in securing medical care. CPS should, when possible, use the child's physician or the clinic where the child normally is treated. If this is not possible, then to CPS should consider using physicians who are knowledgeable about and cooperative in seeing abused and neglected children, and who have experience in dealing with non-accidental trauma, and are willing to participate in all aspects of CPS process (e.g., testifying at fair hearings and in court). Also, CPS should consider using hospitals and medical facilities where the staff has experience and expertise in coping with trauma. Where there is a Child Advocacy Center (CAC) available to CPS, the CAC most likely has medical staff affiliated with it who are experienced working with abused and maltreated children who may be able to examine the child, and the CAC may also have facilities for conducting a medical examination. Similarly, if CPS participates in a multidisciplinary team (MDT), there may be medical professionals affiliated with the MDT who can fulfill this role.

When immediate medical attention is necessary and the child's parents decide to obtain that care on their own, CPS should accompany the parent(s) and the child to the doctor's office or medical facility. If the parents are unable to accompany the worker and child, CPS should suggest that the parents allow the worker to take the child to the doctor's office or medical facility. However, if the parents refuse to obtain the necessary care for the child themselves or to allow CPS take the child to the doctor's office or medical facility, then CPS should consider temporarily removing the child from the care and custody of the parents. If the parents are willing to consent to the child's temporary removal pursuant to FCA §1021, that should be the legal mechanism CPS uses to assume temporary custody. If the parents do not consent, and there is insufficient time to file an abuse or neglect petition or to seek an *ex parte* removal order pursuant to FCA §1022 because of the immediate danger to the child's life or health, it may be necessary to remove the child on an emergency basis without a court order, pursuant to FCA §1024. (For more information on removals and placements, see **Chapter 9,** *Family Court Proceedings***.**)

Please note: the local commissioner of social services may give effective consent for medical, dental, health and hospital services for any child who has been taken into or kept in protective custody or who has been placed in the custody of such commissioner but for whom a court determination of abuse or neglect has not yet been made. The local commissioner may also give effective consent for a child who has been found by the Family Court to be an abused or neglected child.

In some situations, where there is no necessity for immediate medical examination and treatment, it may still be prudent to consider the need for a medical examination for investigative purposes. There are situations where information from an examination is crucial for completing an investigation, where is necessary to make informed decisions about the risk to the child in the future and/or whether the child has been abused or neglected. In situations where the child has not been taken into protective custody, but CPS believes that an examination is necessary to conduct an appropriately thorough investigation, he or she should attempt to gain the cooperation of the parent in having the child examined. If the worker is unsuccessful in his or her attempts to gain the family's cooperation, then the worker must determine whether it is necessary to file a neglect or abuse petition. If the child wishes to be examined for investigative purposes and has the capacity to give informed consent, it may not be necessary to obtain a court order.

In a situation where the child has been removed on an emergency basis without a court order, if CPS wants the child to be examined for investigative purposes, it must first seek court approval by filing a neglect or abuse petition. However, if the child is in the commissioner's custody, it is not necessary to obtain a court order for any necessary medical, dental, health, or hospital care.) In all cases where an Article 10 petition is filed alleging abuse, the law requires the Family Court to order a medical examination, including photographs and x-rays or other radiological examination, where medically indicated; in cases where an Article 10 petition alleges neglect, the Family Court *may* order an examination of the child.

CPS should feel free to confer with the physician during an examination. They should raise questions and provide any information known regarding the possible basis for an injury. Further, workers should request the physician to provide, in writing, his or her best possible medical judgment of each of the following:

- the precise nature of any injuries noted;
- the probable age of the injury;
- the most likely cause(s) of the injuries; and
- any needed appropriate future care of the injury. This information can help guide the formation of plans for services and any other related needs of the child or family. Additionally, it will assist CPS in providing clear guidance for the caretakers.

CPS should also take the steps necessary to secure a psychiatric or psychological evaluation when it appears a child's mental or emotional condition or mental health has been impaired, i.e., when the child appears to have substantially diminished psychological or intellectual functioning in relation to, but not limited to, the following:

- control of aggressive or self-destructive behaviors;
- ability to think, remember, and communicate;
- ability to interpret reality; and/or
- control of obsessional or compulsive thoughts or behaviors.

The evaluation should be aimed at ascertaining, to a reasonable medical or psychological certainty, the severity of the child's condition, the risk of future harm and the cause of the condition. Such an evaluation may serve three important purposes. First, it is a means of obtaining emergency mental health services when the child's condition necessitates such services. Second, the evaluation may provide relevant and important information necessary to establish harm or imminent danger of harm to the child's mental or emotional condition or mental health which is attributable to the parent's conduct. The determination of the investigation must be based on both whether there was harm or imminent risk of harm to the child and on whether the subject of the report was responsible for that harm. Third, the evaluation may be valuable in determining the level of risk for possible abuse or maltreatment of the child in the future.

At the conclusion of a medical or psychological examination, CPS, examining physician, and parent(s), if present, should make plans for follow-up treatment for the child's medical or psychological problems. It is important that CPS's focus on the identification of abuse or maltreatment or on the need for the immediate treatment of an injury does not result in the worker overlooking the need for necessary follow-up treatment.

There are times when, as part of CPS's assessment of the children, CPS learns of a possible health concern pertaining to a child that is unrelated to allegations of abuse or maltreatment. CPS should attempt to discuss the concern with the parents, and should make any referrals and facilitate any evaluations or health services that are appropriate.

3. Photographs

Photographs can be an important source of evidence in a child abuse or neglect investigation.[15] They provide information for CPS staff to consider, weigh and evaluate when determining whether to indicate or unfound a report. Further, photographs graphically preserve visible evidence and accurately document the child's condition. This is important not only for documenting the reasons for CPS' decisions and actions, but can also be essential when presenting a case at a fair hearing or in Family Court.

Photographs of children who may be victims of abuse or maltreatment should be taken or arranged for whenever there are visible physical injuries or trauma. CPS staff should always have ready access to a camera.

Under certain circumstances, mandated reporters are required to take photographs. When a case is reported by a mandated reporter who is employed by an agency or institution that has the capacity to take high quality photographs of injuries or trauma, CPS may choose to use the agency's or institution's photographs when CPS knows that it can have access to such photographs as needed. (See **Chapter 2, Section A.5,** *Photographs and x-rays.*)

[15] See the OCFS/OTDA Local Commissioners Memorandum 17-OCFS-LCM-14, *Establishing a Policy for the Use and Management of Mobile Devices by Local Departments of Social Services,* for information on maintaining privacy of photographs and other CPS information on mobile devices. Also, see the following policies form the New York State Office of Information Technology Services: NYS S14 009, NYS S14 011.

Certain guidelines should be followed to enhance the evidentiary value of investigative photographs:

- All photographs should be in color.
- Hard copy of photos should be obtained, especially when the photo is taken with a phone, tablet, or a digital camera. When another type of camera is used, the negatives should be saved with the case file. If CPS has the capacity to transfer images from the device used to take the photos to a thumb drive, memory card, or a computer disk (CD), that thumb drive, memory card, or CD should be kept in the case file as the digital "original" of the hard copy of the photos.
- The photographs should accurately represent the scene or object and be free of distortion. Different views of the same scene should be taken.
- A full-face photograph should be taken for identification purposes, even if trauma or injury does not appear in that area.
- A photograph showing the relationship between the traumatized or injured area and the general area of the child's body should be taken and then a close-up should be taken, which shows the traumatized or injured area in more detail.
- The photograph should be labeled with the date and time of the photo. Many cameras can automatically date/time stamp a photo. If the camera has this function, it should be used. Additionally, when a hard copy of the photo is obtained, CPS should label the back of the photo with a clear statement of the subject of the photo (e.g., Mr. Smith's living room at 123 Main St., Bob Smith's right arm, etc.).
- The photographer should be able to testify about the date and time each photograph was taken and the camera location and direction. However, it should be noted that it is not necessary for the photographer to appear in court for the photograph to be entered into evidence. If the camera does not have a date/time stamp, the photographer can make a sign identifying the child and the date and time, and then include this sign in the actual photograph. The photograph should be initialed by the person who took the photograph and any witnesses to the taking of the photograph.
- A neutral colored background and proper lighting is advisable.
- The photograph should not be "artistic" or strive to appeal to emotions. It is evidence and should display the scene or subject as objectively as possible.
- To the greatest extent possible, the photographer should photograph a child or a child's injuries in a comforting non-threatening manner. Keep in mind a child's potential to be fearful or embarrassed or have other negative emotional responses to the situation and the photograph.

Where photographs have been taken by a mandated reporter, CPS staff should try to obtain those photographs in conjunction with the mandated reporter's written report (Form LDSS-2221A) or as soon thereafter as possible. CPS is authorized to reimburse mandated reporters for expenses incurred in taking the photographs. (See **Chapter 2, Section A.5*,*** *Photographs and x-rays.*)

All photographs taken by CPS staff or by other photographers and provided to CPS are part of the case record and must be kept secure and confidential with the local case record. (See Case Record, X.A.1)

H. Evaluation of need for protective removal

Social Services Law mandates that all child protective investigations include a determination of the safety and risk to the child(ren) if they remain in the existing home environment. CPS may take protective custody of a child if CPS "has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health" [SSL §417(1)(a); FCA §1024(a)(i)].

Thus, where it is necessary, CPS has the authority under the Family Court Act (FCA) to remove the child. (See **Chapter 9**, *Family Court Proceedings*.)

However, when a child has been assessed to be in imminent danger (i.e. unsafe), CPS should also consider a broad range of safety oriented responses other than removal. These safety oriented responses may protect a child without requiring CPS to take protective custody. Of course, when in-home safety interventions are deemed to be insufficient, and all appropriate reasonable efforts have been made or considered and determined to be inadequate to protect the child's safety, out-of-home placement may be the necessary safety response.

Whether there is imminent danger to a child, it remains imperative that the LDSS have ongoing discussions—ideally from the first contact with the family—about friends and close family as potential resources for the child(ren) alleged to have been abused or maltreated. Though the care of the child(ren) might meet the minimum standard of care at that point in time, circumstances can often change very rapidly. Having knowledge of viable resources can prevent removal or the placement of child(ren) into foster care, promoting a partnership between the LDSS and the parent/caretaker and resulting in overall better outcomes for the child(ren) and family.

The safety factors (including the safety factor guidelines) and safety decision components of the safety assessment provide guidance concerning situations that present an imminent danger to child's life or health (See **Section D,** *Preliminary and ongoing safety assessments.*)

In certain cases, where removal of the child from the home is judged to be appropriate, filing an abuse or neglect petition in Family Court may be justified. In this circumstance, CPS should consider initiating Family Court proceedings under FCA §1031 et. seq. as a means of protecting children. (See **Chapter 9,** *Family Court Proceedings.*)

I. CPS investigation progress notes

(18 NYCRR §428.5) Case progress notes *must begin* upon receipt of a report of suspected child abuse or maltreatment and *must continue* until the case is closed to all services.

Progress notes are part of the official case record, and may subject to examination by the subject or other persons named in the report Progress notes may be entered into evidence in Family Court or Criminal Court, and CPS may be called upon to produce their progress notes in court or elsewhere as evidence and to support actions taken or not taken.

Progress notes provide a contemporaneous record of CPS's investigative, assessment, and intervention activities, and should be objective and behaviorally descriptive. The notes should support CPS's conclusions about safety, risk, family functioning, and should clearly document the evidence that exists to substantiate allegations of child abuse or maltreatment or the lack of such evidence to support unfounding the allegations in a report.

Progress notes serve the purpose of recording CPS(s)'s continuing work with a family, from the time of intake to closing the case. They provide CPS the opportunity to describe how the family functions, whether there are safety and/or risk factors present in the family, and what efforts CPS is making with the family to promote safety and reduce risk.

The notes must:

- state the actions taken in the investigation, including emergency and/or controlling interventions taken,
- describe all communications and interactions with the subject, children, other persons named in the report, source, and collateral contacts,
- describe any other activities undertaken to collect information needed to formulate an assessment or make a determination regarding the report of abuse or maltreatment, and
- document caseworker/supervisor conferences, including the matters discussed and any required follow-up activities.

Progress notes are to be recorded contemporaneously, as timely as possible after the events described, "Contemporaneously" is generally taken to be immediately, but no more than 30 days, after the event.

Progress notes are most useful when they contain the following qualities:

- The notes are specific about details such as date, time, location, and persons present at a given interaction with the family. Failing to be specific can lead to misunderstanding what the note is referring to, and CPS may not recall the information in the future.
  - Example:
    - Instead of: Mrs. Smith missed her appointment last week.
    - Use: CPS worker spoke to Mrs. Smith's mental health therapist, learning that Mrs. Smith missed her appointment that day at 2:00PM. CPS worker contacted Mrs. Smith and she said that she believed the appointment was on the 20th. Mrs. Smith said she would call the clinic and reschedule. CPS worker called the clinic at 4:30 PM and verified that Mrs. Smith had called to reschedule her appointment.

- The notes are descriptive, based on observation and not CPS's interpretation or impression.
  - Example:
    - Instead of: The house was really filthy.
    - Use: Upon entering the home, CPS noted a strong odor of urine and feces waste and observed cat feces on the floor. There were plates with food left out on the table that appeared several days old as they were encrusted with what appeared to be dried pasta and pasta sauce. There were ashtrays overflowing with cigarette butts and open beer cans on the coffee table.
- The notes contain behavioral language. That means that CPS must describe, as concretely as possible, what s/he observes rather than any opinion or inference about the behavior.
  - Example:
    - Instead of: Mr. Jones was very angry when Billy dropped his soda.
    - Use: When Billy dropped his soda, Mr. Jones stood up from his chair, pointed to the soda, and with a raised voice told Billy "I knew you'd drop that damn thing, give it to me!" His face was red and he took the soda from Billy's hand with a jerking motion. Billy began to cry.
- The notes include actual quotes, where appropriate, rather than CPS's interpretation of what was said.
  - Example:
    - Instead of: Thomas doesn't want to talk about what is happening in his family.
    - Use: When CPS worker asked Thomas what he thought about what was happening with his family, he stated "My parents can tell you what's going on. I'm not supposed to talk to anyone about my family except them."

As the examples illustrate, without sufficient detail, description, concrete behavioral language and quotes, each progress note could have been misunderstood, and incorrect conclusions could be drawn about the events described.

Taking contemporaneous notes while speaking with the family or other contacts is a difficult balancing act. Best practice, when available, is to have a second party from CPS take notes so that the CPS worker can devote full attention to the person being interviewed. Where this is not possible, each CPS worker should use whatever method works best for that individual to allow the worker to provide the attention needed to the person(s) to whom he or she is speaking and the environment being observed, while also taking sufficient notes that will enable the worker to fully document the interaction. Immediately after completing an interview or observation, the CPS worker should review and add to notes, as needed, while information is still fresh in the worker's mind.

Progress notes are used by CPS to document the efforts of both CPS and the family to promote safety and reduce risk. Good documentation can aid CPS and supervisor in case planning, providing the basis for making casework decisions.

CPS workers are permitted to have support staff enter data into CONNX from their contemporaneous notes, but should carefully review all data entered by support staff to check that the information was entered accurately and that there are no errors.

The LDSS should have local policies and protocols to assist CPS in understanding local record retention rules regarding handwritten notes and other such documentation.

Reporter / Source information in progress notes

CPS staff should record any identifying information related to contacts with the reporter or source of a CPS report in *investigation stage progress notes only*, selecting Reporter/Source in the Other Participant field. Child welfare staff, including CPS, must not include any identifying information regarding the reporter/source of CPS reports, including references to the institution, organization, etc. with which the person(s) is affiliated, in any narrative field in Safety Assessments, RAPs, Investigative Findings or Investigative Actions. (CONNX Case Management Step-By-Step Guide, Appendix C1, Progress Notes Guidelines) This requirement also applies to reports assigned to family assessment response.

If the source's information is relevant to case, CPS may note the information in a progress note, attributing it to a collateral contact, not identifying the contact as the source.

J. Special considerations for cases with infants

1. Safe Sleep[16]

The risks of unsafe sleep conditions, especially for infants, are well documented both in New York State and across the nation. A significant number of the fatalities reviewed by OCFS each year involve unsafe sleep conditions. Child welfare workers, including CPS personnel, must observe the sleeping provisions for all children, including for infants. CPS are required to provide information about safe sleeping practices for infants, including on the dangers of bed-sharing, to all parents and soon-to-be parents of infants whom they encounter. They must also engage in controlling interventions, as necessary, when they find that an infant is not being put to sleep in a safe manner, including sometimes by assisting them to attain a crib (See the OCFS policy, 13-OCFS-ADM-02, *Safe Sleeping of Children in Child Welfare Cases*).

There are many conditions or practices related to sleeping that are dangerous, primarily for infants,[17] and have been associated with fatalities of infants — from SIDS, suffocation or sudden unexplained infant death (SUID) — while the infants are sleeping. Such conditions and practices include, but are not limited to, the following:

- Placing the infant to sleep on any surface where the infant's face could be wedged between two adjacent surfaces, such as on a couch, chair, or on a bed with a headboard or in a crib in which there are spaces between the mattress and frame.
- Placing the infant to sleep either on a soft surface, or with soft bedding such as pillows, blankets, crib bumpers, or with soft objects such as stuffed animals, or using an infant positioner. This includes placing an infant on a bed or crib with a soft mattress, and especially on a couch, armchair, cushion, waterbed, etc.
- Placing an infant to sleep in any position other than on the back.
- Allowing the infant to get too hot because of high room temperature (the temperature should be comfortable for a lightly clothed adult) or overdressing.
- Smoking in a room where an infant sleeps. Maternal smoking during or after pregnancy also increases the likelihood of a sleep-related fatality.
- Bed-sharing with an infant. Bed-sharing can also increase the likelihood of an infant death while sleeping, especially when accompanied by other risk factors. Bed-sharing refers to an infant and one or more adults or children sleeping together on any surface, not necessarily a bed; bed-sharing also refers to where the infant and another person share a surface such as a couch, chair or futon.
- A person sleeping with the infant is under the influence of alcohol or certain drugs (including legal, illegal, prescription, and over-the-counter drugs), or is overly exhausted.

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[16] Please see the following OCFS policies: 13-OCFS-ADM-02, *Safe Sleeping of Children in Child Welfare Cases*; 13-OCFS-LCM-01, *Investigation and Determination of Sleep-Related Fatality and Injury CPS Reports*; 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping Conditions*.

[17] For the purposes of this document, the age range of "infants" is 0-12 months, which is the time frame in which children are most susceptible to Sudden Infant Death Syndrome (SIDS) and death by asphyxiation while sleeping.

These increase the likelihood that the person will not wake up during a dangerous situation (for example, rolling over on the infant).

There is evidence that most sleep-related deaths of infants are associated with the presence of more than one risk factor.

Some of the most common factors are: not placing an infant to sleep on his/her back (this is a factor in the largest percentage of infant deaths), smoking in the environment, the child has a respiratory infection, bed sharing, and soft bedding. The average age at which an infant is most likely to die while sleeping is approximately 2 to 4 months old.

Child welfare workers can play a role in helping parents to keep their babies safe by providing parents and caregivers with information on safe sleep environments. This enables the parents to make more informed choices concerning their children's sleep environments.

a. *CPS responsibility for infant sleeping conditions assessment*

When a CPS investigates a report involving a family or home where there are children, the worker must always evaluate the environment of the home, including where the child or children sleep, and assess whether the environment, including the sleeping conditions, are adequate and safe. These evaluations and assessments must be noted in progress notes. In the instance in which there is an infant in the home, CPS must assess whether there is a safe sleeping space for the infant.

When conducting any CPS investigation in which there is an infant in the household, irrespective of the allegations or the role of the infant, CPS staff must provide the parent or caregiver with information about safe sleep, including the risks of bed-sharing. Whenever a caseworker encounters a household member who is identified as pregnant, the caseworker should also provide that person with the same information on safe sleep environments and the risks of bed-sharing. CPS can find appropriate information to provide on the OCFS website, but information is available from many other sources, including the New York City government, federal government, state Department of Health, and others.

If the parent or caregiver of an infant does not have a crib, cradle, bassinet, bedside co-sleeper (infant bed that attaches to an adult bed), or play yard (such as a Pack and Play) for the infant, CPS must undertake controlling interventions to provide for the safety of that infant. If the parent or caregiver does not have the financial means to obtain safe sleeping furniture and is not able to secure it privately, CPS must assist the parent or caregiver. The assistance may include referral of the parent or caregiver to a community agency or private source that will provide the parent or caretaker with sleeping furniture at no cost to the LDSS. If community resources are not available, the LDSS must purchase the sleeping furniture. CPS must document the assistance provided and, in any future encounters while the child is an infant, must check and document whether the furniture is being used.

b. *Evaluating sleeping conditions for infants*

An evaluation of an infant's sleeping environment should include an evaluation of a variety of factors, only one of which is bed-sharing. Other factors are: whether there is safe sleep furniture available; whether the infant is placed to sleep on his or her back (not if the infant turns over from his or her back); whether the infant is placed to sleep on soft bedding, such as a couch, or with soft items, such as a comforter, pillow, or stuffed animals; the temperature in the room, etc.

While bed-sharing practices can be a safety factor and present a risk, bed-sharing is not, by itself, evidence of abuse or neglect. OCFS states in its policy, 13-OCFS-LCM-01, Investigation and Determination of Sleep-Related Fatality and Injury CPS Reports, "Bed Sharing by a parent or other person legally responsible with an infant, without an aggravating factor or proof of intentionally harming the infant, is not abuse or maltreatment, irrespective of whether the infant is harmed or not." (Guidance provided in this policy, which has the same title as the policy, ***Investigation and determination of sleep-related fatality and injury CPS reports***, is also in this manual, in **Chapter 14, Section L.**) While this policy specifically addresses the investigation of a case in which harm has already occurred, there is no reason that the standards established would be lower in instances in which there has not been any harm.

CPS should always approach the subject of sleep practices with sensitivity to people's cultural practices, personal preferences, and sometimes strongly held beliefs. The aim whenever there are possible sleep practices that may be harmful in the future is to help parents change their practices by providing information that increases their understanding of possible dangers.

2. Positive toxicology of newborns

The abuse of drugs or alcohol by parents of children, including newborn infants who present with a positive toxicology after birth, is one of the more difficult situations confronting CPS. The benefits of maintaining the parent-child bond must be weighed against the parent's ability to provide adequate care for the infant.

a. *Addressing reports involving positive toxicology of infants*

The definition of "neglected child" in FCA §1012(f)(i)(B) includes failing to provide a minimum degree of care… by misusing a drug or drugs, or misusing alcoholic beverages to the extent that the person loses self-control of his or her actions "…provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired." [18]

The Statewide Central Register of Child Abuse and Maltreatment (SCR) should not register a report based on an infant's positive toxicology if the infant's mother is compliant with a drug treatment program and is demonstrating an ability to care for the infant. Also, in screening reports of the positive toxicology of an infant, the SCR does not differentiate whether a substance is legal or illegal.

If a report is registered, a parent or person legally responsible should not be indicated simply for participating in a substance abuse treatment program. To indicate the parent of a child - including a newborn with a positive toxicology — because of the parent's drug use or abuse, CPS must find that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired. Evidence that a newborn infant tested positive for a drug or alcohol in its bloodstream or urine; or is born dependent on drugs, or with drug withdrawal symptoms, fetal alcohol effect or fetal alcohol syndrome; or has been diagnosed

[18] FCA 1012 (f)(i)(B)

as having a condition that may be attributable to *in utero* exposure to drugs or alcohol is not sufficient, in and of itself, to support a determination that the child is abused or maltreated. In addition, such evidence alone is not sufficient for an LDSS to take protective custody of such a child.

After receiving a report in which parental drug or alcohol misuse is alleged, CPS must determine whether there was such misuse and, if so, whether the child's physical, mental or emotional condition was impaired or is imminent risk. To determine whether the parent's drug or alcohol use creates a condition that places the child's physical, mental or emotional condition in imminent danger of becoming impaired, CPS must assess the ability of the parent to care for the child, examining the parent's plans for the care of the child and his/her ability to follow through with those plans. In the case of a newborn infant born to a drug or alcohol abusing parent, any special needs of that infant should be considered in CPS's assessment of parental capability.

Initiating a cps report

- Health care providers are mandated reporters. If involved in the delivery or care of an infant who is affected by substance use disorder, exhibits withdrawal symptoms resulting from prenatal substance exposure, or is diagnosed with Fetal Alcohol Spectrum Disorder, the health care provider must report to the SCR if there is reasonable cause to suspect that the infant has been abused or maltreated. Most reports citing positive toxicology of an infant are made in this manner.
- A CPS addresses the report with an investigation or, where permitted, CPS may address it with a family assessment response.

Supportive and rehabilitative services

CPS must offer and/or make referrals for appropriate services in cases in which an infant has a positive toxicology screening.[19] Such services can be especially important in preventing the separation of mother and child. Referrals and services may include, but are not limited to, substance use disorder treatment services (both outpatient and inpatient), home visiting, and early intervention screening and services.

Depending on the determination of the report, the services offered could be either mandated or optional preventive services, offered directly by the LDSS and/or through a purchase of service agreement designed to prevent out-of-home placements.

b. *Creating a plan of safe care*

The federal Comprehensive Addiction and Recovery Act of 2016 (CARA), which amended the Child Abuse Prevention and Treatment Act (CAPTA), tackles some of the complex issues surrounding the nation's prescription drug and opioid epidemic. CARA places a strong emphasis on a multi-agency approach to the problem of substance abuse. CARA changed some of the requirements for developing a **plan of safe care** for infants exposed to substances. These changes reflect a growing body of evidence that supports a collaborative approach between various agencies and providers when responding to the challenges and complexities of dealing with substance use disorders.

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[19] Core preventative services must be made available to a child/youth and his/her family when there is a danger that the child may be separated from his/her family and services may prevent such removal or separation, pursuant to OCFS regulations 18 NYCRR Part 423, 18 NYCRR 430.9 and SSL § 409-a.

The OCFS policy, 17-OCFS-LCM-03, *Amendments to the Federal Child Abuse Prevention and Treatment Act by the Federal Comprehensive Addiction and Recovery Act of 2016 and Corresponding State Requirements,* provides guidance to CPS on complying with the new requirements set forth in CARA for handling cases in which an infant has a positive toxicology or shows signs of withdrawal symptoms, or Fetal Alcohol Spectrum Disorder (FASD).

Requirement to create a plan of safe care

Under CARA, **whenever an infant is identified as being exposed to substances, the state must provide for the development of a plan of safe care** that addresses the health and substance use disorder treatment needs of both the infant and the affected family or caregiver. The plan of safe care must address not only the immediate safety needs of the affected infant, but also the health and substance use disorder needs of the affected family or caregiver. A plan of safe care should include referrals to appropriate services that support the affected infant and family or caregivers.

The plan of safe care should be developed with input from parents and caregivers, as well as from professionals and agencies involved in serving the affected infant and family. It may be written by a physician, other medical provider, CPS, social worker, or another entity.

CPS documentation requirements for the plan of safe care

Whenever a report of suspected abuse or maltreatment involves an infant exposed to substances, CPS must document the plan of safe care in its case records. In some instances, a plan of safe care may have been developed by medical professionals and/or substance abuse treatment providers prior to the involvement of CPS. The case file should clearly document the plan of safe care, whether developed by CPS or other professionals involved.[20]

A plan of safe care is not the same thing as a Safety Plan

A plan of safe care, as described above, is a document and plan that specifically addresses children affected by substance use and the parent/caregiver. A Safety Plan is a plan developed by an LDSS in partnership with the parent/caregiver that includes controlling interventions to address safety factors that would place a child in imminent danger of serious harm. A plan of safe care might be included as part of a Safety Plan, but is never a substitute for one. (See **Chapter 6, D.2**, *The safety assessment process*)

In 2018, OCFS issued OCFS-2196: Plan of Safe Care *(see* **Chapter 14***, Appendix),* which is the required form to be used when developing a plan of safe care with a family. Completion of the OCFS-2196 should be documented in Progress Notes, including a description of how the family was involved in the creation of the plan and how the plan will be monitored and adjusted as necessary. A paper copy of the plan must be maintained in the case file.

3. Early intervention referrals

The Early Intervention Program, which is a voluntary program that identifies infants and toddlers with disabling conditions, is a potentially valuable resource for families with young children. This is a free program in which professional staff evaluates the needs of young children for a range of early intervention services and develops individualized family service plans to address such needs.

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[20] 18 NYCRR 428.3

Pursuant to federal requirements[21] and OCFS policy,[22] districts must inform all parents of a child under the age of three who are the subjects in an indicated report of child abuse or maltreatment about the Early Intervention Program and refer them to their county's Early Intervention Program.

Although there is no requirement to do so, CPS may, of course, provide a referral to any parent whom they encounter in their work, including those involved in cases that are unfounded, and should certainly do so in any case in which they encounter a child under the age of three whom they suspect may have a disability or developmental delay. Early intervention can sometimes have a significant impact on the effectiveness of treating certain conditions, such as autism.

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[21] See Part C of the Individuals with Disabilities Act (20 U.S.C. 1431 et seq.) and Section 106(b)(2)(B)(xii) of the Child Abuse Prevention and Treatment Act (CAPTA).

[22] See 04-OCFS-LCM-04, *Referrals of Young Children In Indicated CPS Cases to Early Intervention Services.*

K. Child fatalities

Whenever a child protective service worker (CPS worker) receives a report from the SCR in which there is a child fatality, CPS must implement additional processes and responses that go beyond those normally required in response to a child abuse or maltreatment report CPS must complete a 24-Hour Fatality Report and a 30-Day Fatality Report in CONNX. Also, unless there are no surviving siblings or other children in the household, CPS must complete a 24-hour safety assessment and a 30-day safety assessment, in addition to the required seven-day and investigation conclusion safety assessments.

1. 24-Hour Fatality Report and 24-Hour Safety Assessment

CPS must complete a 24-Hour Fatality Report within 24 hours of receipt of a report alleging the death of a child resulting from abuse or maltreatment. The template for this report is available in CONNX for all reports containing an allegation of a child fatality.

CPS must also complete a safety assessment within 24-hours of receipt of the fatality report. The 24-hour assessment does not replace, but is in addition to, the seven-day safety assessment.

The 24-Hour Fatality Report is used to record the initial investigative and assessment activities related to the death of a child. The 24-Hour safety assessment is used to record the assessment of safety of any surviving siblings or other children in the existing home environment.

Elements of the 24-Hour Fatality Report

When completing the 24-Hour Fatality Report, CPS must document all case information obtained in the initial 24 hours of the fatality investigation. Such information includes, but is not limited to, the following:

- ***Causes and Circumstances Surrounding the Death***

  Include a description of what is known about the cause of the child's death, the circumstances leading up to the death, and the basis of the suspicion that the child died as a result of abuse or maltreatment. Include any variations from the original explanation for the child's death, including how child injuries were incurred. It is important to include any known contact information for the medical examiner or coroner and the date the medical examiner or coroner was notified of the death of the child. Also, include any known information about the autopsy status and/or results. Record the child's legal status at the time of death.

- ***Living Arrangements and Status of Surviving Siblings***

  Include a description of the condition and location of any surviving child(ren). Include actions taken or pending to secure the safety of all surviving children. If the child(ren) have been placed outside the home, include the caretaker(s)' complete name(s) and address(es).

- ***Law Enforcement Involvement***

  Include all information regarding actions taken or planned by the police and/or the district attorney's office. Include the name of the police precinct, department or agency and the name, address and contact number of the investigating officer(s) Document the date the district attorney's office was notified of the child fatality and the contact information for the district attorney.

- ***Other Comments***

  Include the date and circumstances of the LDSS's last personal contact with the family, the nature of any casework interaction with the family prior to the fatality, if applicable, and any other pertinent case information relative to the investigation.

- ***Will Case Be Submitted to a Child Fatality Review Team?***

  Indicate the correct response in CONNX: Yes, No, Unknown, or No Team.

For technical instructions about entering the information in CONNX, refer to the CONNX Step-By-Step Guide, Training for CPS.

After all the necessary information is recorded in the 24-hour Fatality Report, the appropriate Regional Office is responsible for reviewing and monitoring the handling of the case. (See **Chapter 11,** *Child Fatality Reviews*.)

The 24-hour safety assessment is a requirement in CONNX unless there are *no* surviving siblings or children in the household. If there are no surviving siblings or other children in the home, CPS must check a box in the INV Conclusion screen in CONNX labelled "no surviving children" to disable the 24-hour and other safety assessments and allow the investigation to be closed without completing them.

2. 30-day fatality report and 30-day safety assessment

The 30-day Fatality Report is used by CPS to record pertinent information about a child fatality that is learned during the first half of the investigative period.

CPS must also complete a safety assessment at 30 days for reports of a child fatality, unless there are *no* surviving siblings or children in the household. This is in addition to the 24-hour assessment, the initial seven-day assessment and the conclusion safety assessment that must be completed within seven days prior to closing the case. If there are no surviving siblings or other children in the household, CPS must check a box labelled "no surviving children" in the INV Conclusion screen in CONNX to disable the 30-day and other safety assessments and allow the worker to close the investigation in CONNX without completing the safety assessments.

The 30-day Fatality Report must be documented in a template in CONNX within 30 days of the receipt of a report alleging the death of a child because of abuse or maltreatment. For complete instructions on how to enter the 30-day Fatality Report information, refer to the CONNX Step-By-Step Guide, Training for CPS, available to CPS on the OCFS *intranet* website.

To complete the 30-day Fatality Report, CPS must document all pertinent information about the case learned during the initial 30 days of its investigation. The 30-Day Fatality Report pre-fills with all information contained in the 24-hour Fatality Report. Pre-filled information should be updated as appropriate, and the 30-day Fatality Report should include information that was not known and is more current than the information entered at the time of the 24-hour Fatality Report.

Updated or new information documented in the 30-day Fatality Report must include, but is not limited to, the following:

- ***Causes and Circumstances Surrounding the Death***

  Include any new information regarding the child's cause of death and/or the circumstances leading up to the death. Document autopsy results contained in the coroner's or medical examiner's preliminary or final autopsy report and indicate which report was the source of the information.

- ***Living Arrangements and Status of Surviving Siblings***

  Include new or updated information concerning the condition and/or location of any surviving child(ren). Include actions taken or pending to secure the safety of any surviving children, including any related Family Court actions.

- ***Law Enforcement Involvement***

  Include new or updated information regarding actions taken or planned by the police and/or the district attorney's office. Include the status of any criminal charges that have been filed or are pending in the case. Indicate whether a multidisciplinary team is involved in the investigation and, if so, describe its activities and the roles of the participating individuals and agencies.

- ***Summary of Past Service History***

  Include any past local district child protective, child welfare, and/or family service involvement with the family.

- ***Actions Planned***

  Include a summary of child protective service activity to date and what plans, if any, there are for future activity with the family. Describe any non-CPS actions taken or planned by the local district and/or other service providers to secure the safety of any surviving child(ren) and to meet the overall service needs of the family.

- ***Other Comments***

  Include the date and circumstances of the last local district personal contact with the family and describe any new or updated case information pertinent to the investigation.

- *Will Case Be Submitted to Child Fatality Review Team?*

  Indicate the correct response: Yes, No, Unknown, or No Team.

As with the 24-hour Fatality report, the appropriate OCFS Regional Office is responsible for reviewing the 30-day Fatality Report and monitoring the fatality case activities. (See **Chapter 11,** *Child Fatality Reviews.*)

3. Conclusion safety assessment

As with all CPS investigations, the CPS must complete a safety assessment for a fatality investigation no more than seven days prior to entering a conclusion of "indicated" or "unfounded," unless there are no surviving children. If there are no surviving siblings or other children in the household, CPS should check the box for "no surviving children" in CONNX, which will then allow CPS to enter a conclusion and to close the case without submitting a final safety assessment or a Risk Assessment Profile (RAP).

4. Investigation of re-reports of child fatalities

A re-reported fatality is a fatality that was previously investigated by CPS and closed, for which a new report of the fatality provides no new information and no new or different allegations than were included in the previous report and investigation.

The specific responsibilities of CPS regarding new reports of a previously investigated fatality are as follows:

1. CPS must provide notification letters, as is done upon the receipt of any report from the SCR.
2. When a new SCR report of a fatality appears to duplicate information from a previous SCR report of the same fatality, CPS must review the new report and contact the source of the new report to determine:
   - whether the new *report* contains any new information that was not previously reported or investigated; and
   - whether the *source* has any additional new information that was not previously reported or investigated.
3. CPS must conduct a safety check of the children named in the report and other children in the household.
4. CPS must check prior CPS records to see if anything has been documented since the last CPS report of the fatality that suggests there may be current safety concerns.
5. Having completed the above steps and finding no new safety concerns and no new information, CPS can use information gathered from the previous investigation to document the investigation of the new report.
6. If, upon contact with the source of the re-report, or any other collateral contacts, CPS learns new information or allegations regarding the fatality, or of allegations regarding any surviving children in the home, CPS must:
   - immediately conduct a new investigation of the death.
   - immediately investigate any safety concerns based on:
     a. contact with the source of the reporter-reported fatality, or
     b. a review of CPS history recorded in CONNX since the last CPS report, or on the safety check conducted of children currently living in the home.

5. LDSS responsibilities for reporting child fatalities

If an LDSS becomes aware of a child fatality that occurs in an open CPS, preventive, or foster care case, and no report of suspected child abuse or maltreatment regarding the fatality has been made to the SCR, the LDSS must implement these required actions:

- Notify the applicable Regional Office of the death by telephone within 24 hours of learning of the fatality.
- Submit form OCFS-7065 to the applicable Regional Office within 72 hours of learning of the fatality. The title of this form is “Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Deaths of Children in Open Child Protective or Preventive Cases.”
- Gather information (circumstances and facts) about the death, and determine whether there is reasonable cause to suspect that the death was the result of abuse or maltreatment by the caretaker(s). **If such reasonable cause to suspect abuse or maltreatment exists, an LDSS staff member must make a report to the SCR.**

L. Collaborating with the Criminal Justice System

1. Overview

The New York Child Protective Services Act (1973), codified at Title 6, Article 6 of the Social Services Law, provided for intervention in families where child abuse and maltreatment occurs. The law emphasizes a social services approach to intervention and gives responsibility for investigating reports of suspected cases of abuse and maltreatment to local child protective services in order to provide protection for the child and rehabilitative services for the family. The law anticipates a role for law enforcement involvement in certain investigations of suspected cases of child abuse and maltreatment since many actions, such as sexual abuse, are also crimes as defined under the New York State Penal Law.

Both the police (State or Local) and the office of the district attorney can be of assistance to child protective services in certain situations. Through Multidisciplinary Investigative Teams, Child Advocacy Centers or joint investigation agreements, child protective services in New York are often working more closely with law enforcement. It is important that child protective services conduct an independent, thorough, and timely investigation while collaborating with law enforcement.

2. Communication with district attorney and police agencies

CPS information is confidential and cannot be revealed except as the law expressly authorizes. Under SSL §424(4), the local child protective service shall give immediate telephone notice to the district attorney of reports involving the death of a child and forward to the district attorney a copy of reports involving the death of a child made pursuant to Article 6, Title 6 of the Social Services Law. Further information may be obtained by the police and district attorneys pursuant to SSL §422(4)(A)(I). (See *Obtaining Access to CPS Information*, X.B.1)

a. *Local agreements for information sharing*

The district attorney shall receive a copy of any or all reports if a prior written request is made to the local child protective service. SSL §424(4) requires local districts to provide telephone notice to district attorneys of any and all reports of child abuse and maltreatment if the district attorney has requested such notice in writing.

The request for copies of reports and telephone notice can be written in such a manner that it need only be made once to cover all future similar reports. Such requests must specify the categories of allegations as listed in the SCR system for which the district attorney requires notice and/or copies and should cite the relevant provisions of law authorizing disclosure. The district attorney may also request to receive copies of subsequent reports.

However, an LDSS may *not* provide a district attorney with a copy of a report or any information regarding a report that is assigned to the family assessment track (FAR). Because reports may not be assigned to FAR when the allegations in the report are exclude the use of FAR or there are safety concerns regarding children named in the report, it is unlikely that such reports would fall within the parameters of the types of reports that a district attorney wishes to see.

b. *State-required information sharing*

In addition to the requirements for providing information to the district attorney, pursuant to SSL §424(5-a), CPS must provide telephone notice and immediately forward copies of reports to the appropriate local law enforcement entity if the report alleges: a) death of a child, b) sexual abuse of a child; or c) physical abuse of a child, pursuant to FCA §1012(e)(i). FCA §1012(e)(i) defines abuse as inflicted or allowed to be inflicted, as opposed to the subsequent sections where a substantial risk of abuse was created or allowed to be created. Investigations of reports including these allegations must be investigated by an MDT where an MDT exists. Should there be no MDT, but OCFS has approved a local protocol, that protocol will dictate what reports are to be forwarded to law enforcement and who conducts the investigations.

If CPS receives a report of suspected maltreatment that alleges any physical harm, *and* the report was made by a mandated reporter, *and* there have been two reports in the past six months that are either indicated or still pending involving the same subject, child, a sibling of the child or another child in the household, then CPS must make a timely assessment of whether it should provide notice to the appropriate local law enforcement entity. If CPS determines that law enforcement should be notified, it must give telephone notice and immediately forward a copy of the report to the law enforcement entity; then, the appropriate MDT (where an MDT exists) must complete the investigation. Where no MDT exists, the investigation would have to be conducted jointly by CPS and law enforcement. If there is an OCFS-approved local protocol on CPS/law enforcement joint investigations that doesn't necessitate such information sharing in all instances, then such information sharing need not occur, and the investigation would be conducted pursuant to the approved local protocol.

c. *Suspected false reports*

Each local CPS is required by SSL §424(8) to refer to the appropriate law enforcement agency or district attorney any case where CPS suspects the reporter knowingly made a false report of child abuse or maltreatment. Any person making a child abuse or maltreatment report who knows the information reported to be false or baseless may be guilty of a class A misdemeanor.

In some cases, CPS becomes suspicious after starting an investigation that the report is an intentionally false report, or a subject of the report may express concerns that the report is purposely false, called into the SCR as an attempt to harass the individual or cause other difficulties. In these instances, the child protective service should decide, based on information available, whether it is appropriate to make a referral to law enforcement for intentional false reporting. CPS should ask the complainant to explain in writing, as clearly and completely as possible, the rationale for why he or she believes the reporting source knowingly made a false report. This must be done without informing the subject of the report of the identity of the source. CPS needs this statement to determine whether it has sufficient cause to refer the case to the appropriate law enforcement agency or district attorney. If CPS makes a referral to law enforcement of suspected intentional false reporting, it may provide identifying information concerning the source of the report to the law enforcement agency or district attorney.

When a local district develops a written understanding with the district attorney's office, they should include procedures regarding how false reporting of cases will be addressed by law enforcement personnel. (*See Development of Cooperative Investigative Procedures with the District Attorney*, IV.D.4.c)

d. *Reporting crimes to law enforcement*

In cases in which CPS believes that a crime involving a child has been committed, the local CPS should make a referral to the district attorney. In this instance, only the information contained in the SCR report records should be shared with the district attorney. Further information may be shared pursuant to the requirements of SSL §422(4)(A)(l). (See *Access to CPS Information*, X.B.1)

e. *Sharing CPS information for a law enforcement investigation*

SSL §422(4)(A)(l) requires a CPS to provide information from an **indicated** or **open** CPS report to a criminal justice agency, which includes: a district attorney, assistant district attorney or an investigator employed in the DA's office an officer of the state police, regional state park police, county department of parks, or city, county, town, or village police department, county sheriff's office, or Indian police officer, when the agency states the information is:

- necessary to conduct a criminal investigation or to criminally prosecute a person, and
- that there is reasonable to believe that such person is the subject of a CPS report, and
- that due to the nature of the crime under investigation or prosecution it is reasonable to believe that such records may be related to the criminal investigation or prosecution. (See *Access to CPS Information*, X. B.1)

f. *Special procedures for when a child is missing*

There are specific requirements in the law that pertain only to those circumstances in which a criminal justice agency is conducting an investigation regarding a missing child and requests CPS information to assist in the investigation. The LDSS must provide the criminal justice agency with information from the records of any pertinent ***indicated*** CPS report or any CPS report that is ***under investigation*** at the time of the request. The district may also provide any ancillary information it may have about the family that pertains to those records but is not included in the records.

The standard to use for determining whether to provide the confidential information to the criminal justice agency is if such agency states that:

- it has reason to suspect that a parent, guardian or other person legally responsible for the child is or ***may*** be the subject of a report, or that the child or the child's sibling is or ***may*** be named in a report; and
- any such information is or ***may*** be needed for the investigation.

A district must ***not*** share information with a criminal justice agency from the record of any CPS report that was **unfounded** or assigned to **FAR**[23]. (See **Chapter 5, Section J,** *Confidentiality provisions*.)

If information in a CPS FAR record was added to a subsequent CPS report not assigned to FAR because it was relevant to the investigation of the subsequent report, the information in the subsequent report record may be shared with law enforcement.

[23] New York State SSL §427-a(5)(d).

Information may be withheld from law enforcement pursuant to the requirements contained in SSL §422(4)(B) If determined that release would be detrimental to the child named in the report. (See *Denial of Access by Local Districts*, X.B.5)

Access to information about pending or indicated reports which may not be shared pursuant to the authority referenced above may only be obtained by the district attorney pursuant to court order, a grand jury subpoena or with authorization of the subject of the report or other person named in the report. A grand jury may obtain information contained in the case record of an indicated or pending report upon a finding that the information is necessary for the determination of charges before it.

A decision to initiate criminal prosecution of a case of child abuse and maltreatment is the responsibility of the district attorney. The criminal investigation for such a prosecution may be conducted by the district attorney's office or by a police agency designated by the district attorney.

The local CPS should attempt to obtain the cooperation of the local police agencies and the district attorney's office in obtaining access to information contained in police records during investigations of child abuse and maltreatment. If criminal prosecution is initiated, CPS should ask to be informed of the significant decisions in the prosecution of the case. Agreements with police agencies and the district attorney concerning sharing of information should be contained in the summary of understanding with the district attorney's office. (See *Collaborating with the Criminal Justice System*, IV.D.4)

3. Development of cooperative investigative procedures with the district attorney

Each district must include in its Child and Family Services Plan (Plan) a summary of the understanding between the LDSS and the district attorney's office, which outlines the cooperative procedures to be followed by both parties in investigating incidents of child abuse and maltreatment, consistent with their respective obligations for the investigation or prosecution of such incidents, as otherwise required by law and consistent with the duties of CPS concerning intake, investigation, arranging services, and monitoring. **Chapter 14, Section K** contains a Model Memorandum of Understanding, which a district could choose to replicate. Alternatively, a district may develop another agreement that meets the needs of both the district attorney and the district.[24].

4. Coordinating CPS and criminal investigations

Both CPS and the district attorney's office, in conjunction with police agencies, have specific responsibilities when conducting investigations. CPS conducts civil investigations, which focus upon the protection of the child from abuse or maltreatment and, on the future rehabilitation of the family, where that is a concern, and on protecting the child from future abuse or maltreatment. Law enforcement is responsible for the criminal investigation, which focuses on the gathering of

[24] 18 NYCRR 432.2(f)(2) 18 NYCRR 432.2(f)(3) 18 NYCRR 432.2(f)

evidence, apprehension, prosecution and conviction of the offender. Since the disciplines have distinct responsibilities, CPS investigation cannot be delegated to the police or the District Attorney. Although CPS and law enforcement have their respective responsibilities, there are situations where they should be working closely together.

a. *Cooperative efforts between CPS and law enforcement*

In counties where no approved MDT exists, CPS and local law enforcement must conduct investigation of certain reports jointly, unless the county has an OCFS — approved protocol between CPS and the local law enforcement entity that does not necessitate such joint response.

CPS cannot simply cede its responsibilities to conduct an investigation and facilitate child safety to law enforcement. While CPS needs to work in cooperation with law enforcement entities and should remain mindful of law enforcement's responsibility to collect possible evidence of a crime and build a case for possible prosecution, CPS also has its own statutory responsibilities. To the extent possible, CPS and law enforcement entities should discuss the types of case circumstances that might occur in a case where each would have responsibilities so that both CPS and law enforcement are able to fulfill their respective responsibilities with as little discord as possible when such a case occurs. For example, if law enforcement makes a strong argument that CPS not contact a subject for a time-limited period, it may be possible for CPS to continue to carry out its mandates by contacting the child(ren) and/or collateral contacts. This cannot continue indefinitely, however - to conduct a complete investigation, CPS must speak to the subject of the report. If law enforcement seeks to prevent CPS from carrying out its statutory responsibilities, it may be necessary to ask the county attorney or social services department attorney to contact the district attorney to resolve the issue.

In many situations, the police will be acting as agents of the District Attorney's office when conducting criminal investigations. SSL §422(4)(A)(I) permits access to CPS information regarding indicated or pending reports[25] by a sworn officer of the Division of State Police, of a city police department, or of a county, town or village police department or a county sheriff's office or department. Access to information is allowed when such officer requests such information stating that such information is necessary to conduct a criminal investigation or a criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that, due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution. (See *Access to Information – CPS*, X.B.1)

b. *Requesting police protection*

However, circumstances may arise where police may assist CPS staff in the civil investigation. Such circumstances would include situations where law enforcement presence is necessary to protect children, family members, CPS staff or others.

The child protective service should request the police to accompany workers under the following two general circumstances:

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[25] Except for cases assigned to the Family Assessment Response (FAR) track, as per SSL §427-a(5)(d), already say indicated and pending. This is redundant.

- a child is in immediate danger or thought to be in immediate danger and the worker cannot enter the home or other place where the child is located; this may be necessary if, for example, forced entry is necessary to protect unsupervised children and/or a parent is denying access to the child or home;

  Note: As required by SSL §424(6-a) and 424(6-b), if the worker is unable to locate a child or has been denied access to the home or a child, and where the worker has reasonable cause to believe a child's life or health may be in danger, the worker should advise the parent or person legally responsible for the child's care or with whom the child is residing that, if denied sufficient access, the worker may contact the Family Court to seek an immediate court order to gain access to the home and/or the child, without further notice. In addition, the worker should inform the parent that law enforcement may be contacted and, if contacted, shall respond and shall remain where the child is believed to be present until such order to produce the child or gain access to the child is obtained.

- there is possible danger to CPS. Potentially dangerous situations may include the following: CPS has been threatened with violence; the parent's behavior is highly unpredictable due to drugs, alcohol, or mental illness; an electronic criminal record search indicates that there may be someone in the home who potentially has a violent criminal record; the investigation must be conducted in an excessively high crime neighborhood; the investigation must be conducted late at night; the home is believed or known to contain firearms; the family owns or keeps dogs that are known to be or reasonably suspected to be vicious.

CPS should notify the police that there is an immediate need for intervention in the following situations:

- in cases in which a crime is believed to be occurring;
- when the family makes itself inaccessible and there is reason to fear for the safety of the child; or
- when an immediate response is essential and police proximity to the child's location gives the police faster access than CPS has.

In the situations described above and in other emergency situations (e.g., a domestic violence call involving physical violence), the police may be the first officials to investigate an incident of child abuse and maltreatment. In such situations, SSL §417(1)(a) permits a law enforcement official to take a child into protective custody. (See *Protective Custody*, VII.E)

Whenever police escort/intervention has been requested or when the police have taken protective custody of the child, CPS may share information verbally with the police that will aid in providing emergency assistance to the child, i.e., nature and extent of injuries, family composition.

It is essential that CPS and law enforcement investigations be coordinated and procedures be clearly stated in the written understanding between CPS and the District Attorney's office. Such procedures will enhance communication between agencies, reduce the likelihood of confusion as to the roles and responsibilities of each agency and reduce the amount of trauma experienced by the child and family because of the investigations. Where consistent with confidentiality constraints, informing each other of actions taken during their respective civil and criminal investigations allows CPS and police officer to make decisions in concert

that provide protection for the child. A team creates a coordinated approach and facilitates accomplishment of both the child protective and law enforcement tasks. Communication will assist in avoiding possible conflict between law enforcement and child protection. It is important that law enforcement and CPS inform each other of their involvement in the case, what their respective duties include and when significant decisions are made. If questions arise concerning the team approach, confidentiality, case decisions, or the respective duties of CPS and law enforcement officers, districts should consult with their County Attorney or the Office of Legal Affairs of OCFS.

5. Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs)

a. *Multidisciplinary Teams (MDT)*

Many districts have developed multidisciplinary investigative teams (MDTs), which may work with or be part of a Child Advocacy Center (CAC), for the purpose of investigating certain reports of suspected child abuse or maltreatment. MDTs must include, but are not limited to, members who are from: CPS; law enforcement; the district attorney's office; a physician or medical provider trained in forensic pediatrics; mental health professional; victim advocacy personnel; and, if one exists, a child advocacy center. The purpose of MDTs is to coordinate the responses of all the agencies involved in the investigation, prosecution and case management of child abuse and maltreatment cases, primarily those cases where prosecution may be a component. From a child well-being perspective, MDTs, especially when they are operating out of child advocacy centers (CACs), help to reduce trauma to a child by reducing the number of interviews for the child and providing a safe and comfortable place for such interview(s).

Counties with approved MDTs are required to use such teams in the investigation of sexual abuse reports; abuse reports, as described in FCA §1012(e); and reports involving child fatalities. Additionally, CPS must evaluate whether to forward a maltreatment report alleging physical harm to local law enforcement to be investigated by the MDT when the report is made by a mandated reporter and there have also been two or more indicated or pending reports received in the past six months concerning that child, the child's siblings, other children in the household or the subject of the report.

Not every member is required to participate in each investigation. However, members of the MDT primarily responsible for the investigation of child abuse reports, including CPS, law enforcement and the district attorney's office, must participate in joint interviews and conduct investigative functions consistent with the mission of the specific agency member involved. All members are expected to facilitate the efficient delivery of services to victims. MDT members may share client-identifiable information with one another to facilitate the investigation of child abuse and maltreatment.

b. *Child Advocacy Centers (CAC)*

In addition to MDTs, many communities have established Child Advocacy Centers (CACs). OCFS facilitates the establishment of CACs so that child victims of sexual abuse or serious physical abuse have reasonable access to such a center and so that their cases are handled in an expert and timely manner, by a coordinated and cooperative effort that minimizes trauma to the children and their non-offending family members. CACs can be established by either a governmental entity or a private, nonprofit incorporated agency and must meet OCFS standards. CACs support multi-disciplinary investigations and the impact such intervention has on children and families. Some of the minimum requirements of a CAC include:

- a comfortable and private setting that is both physically and psychologically safe for children
- culturally competent policies, practices and procedures
- forensic interviews to be conducted in a manner that is neutral and fact-finding, and is coordinated to avoid duplicative interviewing
- specialized medical evaluation and treatment either at the center or through a coordinated referral process
- specialized mental health services either at the center or through a coordinated referral process
- victim support and advocacy as part of the MDT response
- An established MDT
- A written set of interagency protocols

6. Missing or abducted children[26]

The federal Preventing Sex Trafficking and Strengthening Families Act (the Act) [P.L. 113-183] set forth requirements regarding the response to children who are missing or abducted[27] from home and who part of an open child protective services case.

CPS caseworker may have been informed by the parents during a home visit that they have not heard from the child in days, or someone may have called the LDSS to report that they are concerned about the child because he or she has not been home in days. No matter how the information comes to CPS caseworker, it must be acted upon within 24 hours of the child being reported as missing or abducted.

CPS caseworker must report the child to law enforcement as missing or abducted for entry into the National Crime Information Center (NCIC) database, and must also report to National Center for Missing and Exploited Children (NCMEC.) Whenever possible, the caseworker should work with the parent/guardian in competing this required reporting. This report must be made in no case later than 24 hours of receiving such information. CPS staff must remember that they are mandated reporters and must act accordingly if they have reasonable cause to suspect that the parent's refusal to report the child as missing constitutes abuse or maltreatment.

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[26] 16-OCFS-ADM-09, *Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care*

[27] The terms "absent" and "missing" refer to children and youth who are voluntarily absent (have run away), are missing (whereabouts are unknown), or have been abducted.

M. Commercial sexual exploitation of children and human trafficking[28]

1. Overview of sex trafficking

In 2014, the United States government enacted the *Preventing Sex Trafficking and Strengthening Families Act,* which had among its aims to protect and prevent at-risk children and youth from becoming victims of sex trafficking. Though any child or youth can be a victim of sex trafficking, there are certain populations that are more vulnerable, including children who are named in child protective cases.

"Sex trafficking'" is defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" and "severe forms of trafficking in persons" is defined as: "sex trafficking in which the commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age." ***This means that any child under age 18 who is induced to perform a commercial sex act is considered a sex trafficking victim, regardless of whether force, fraud or coercion is present.*** A commercial sex act is one where something of value — money, food, clothing, drugs, shelter, protection, or other consideration — is provided in exchange for a sex act. Commercial sex may include a child being prostituted, child pornography, exotic dancing, private sex parties, and other sexual exploitation.

New York State requires that child welfare staff should be aware of potential red flags that may indicate that a child is a sex trafficking victim. The presence of a red flag does not mean the child is a victim; rather workers should look for a pattern of red flags when identifying youth who may be a trafficking victim, or at risk of being a victim. Key red flags and vulnerabilities for child sex trafficking include, but are not limited to:

- History of sex abuse
- History of running away or current status as a runaway
- Signs of current physical abuse and/or multiple sexually transmitted diseases
- Unstable home life (youth living with an unstably housed family member)
- Youth with involvement with the child welfare or foster care system
- Inexplicable gifts, getting hair/nails done, clothing, or electronics, such as cell phones, that do not fit the youth's situation
- Presence of, or communication with, an older controlling boyfriend/girlfriend
- Youth with significant substance abuse (youth with drug addictions are sometimes targeted because they can be easily controlled using drugs)
- Withdrawal or lack of interest with previous activities (depression or being forced to spend time with traffickers)
- Gang involvement, especially among girls
- Travel to other states or staying at hotels during a runaway incident

[28] See 15-OCFS-ADM-16, *Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims.*

Identification of victims and those at higher risk is important for several reasons. First, and foremost, once identified, a victim can receive services that are responsive to his or her needs. For those identified as at risk prior to a trafficking incident, services and supports can be put in place to help prevent victimization.

2. Child Welfare requirement to screen for sex trafficking

CPS are required to screen all children whom they encounter as to whether the child is a child sex trafficking victim or at risk of being a child sex trafficking victim.

OCFS has developed two tools to screen or assess for sex trafficking victimization or risk level, which can be used by CPS (available on the OCFS website.)

- *Rapid Indicator Tool to Identify Children Who May Be Sex Trafficking Victims or At Risk of Being a Sex Trafficking Victim*
- *Child Sex Trafficking Indicators Tool*

3. Requirement to report sex trafficking

The first tool, is used to determine if a child is at risk and needs a more comprehensive screening. This tool must be completed prior to the closing of the investigation. As a rule, CPS should not ask children the questions on this tool directly. Some of the questions could embarrass, confuse, or antagonize many children. Rather, the questions should be used to direct CPS's thinking; where necessary, the worker may direct conversation in such a way that the worker can assess the answers to each of the question. The results of the quick screening must be documented in CONNX on the "sex trafficking screening" screen.

If the quick screening found that the child is a victim or at risk of being a sex trafficking victim, a comprehensive screening must be done within 30 days. **It is recommended that CPS reach out to the Safe Harbour project's LDSS lead in his or her county, if the county is participating in the project, for assistance with the comprehensive screening.**

If a child is determined to be a sex trafficking victim, the district is required to report the victimization to law enforcement immediately, in no case later than 24 hours after the child is identified as a victim. A worker must document in the CONNX "sex trafficking screening" screen that the child is a victim. If the child is in immediate danger or at risk of harm, the worker should immediately call 911. The worker should document this call, and the police report number for reference.

N. Domestic violence

For the purposes of this section, “domestic violence” refers to a pattern of coercive tactics, which can include physical, psychological, sexual, economic, and/or emotional abuse, perpetrated by one person against an adult intimate partner with the goal of establishing and maintaining power and control over the partner. Importantly, not all domestic violence involves physical violence, although there may be an implied threat of physical violence. A violent argument between adult partners does not automatically equate to an imbalance of power between the partners, although it would certainly raise concerns.

Domestic violence can occur in all types of families. Domestic violence cuts across all socio-economic levels in society and can be present in homosexual as well as heterosexual relationships.

There is significant overlap between the abuse and maltreatment of children and the presence of domestic violence in the caretaker’s relationship. Various studies have found that in 30-60% of families where there is child abuse or maltreatment, there is also domestic violence.

While the presence of domestic violence in a household does not mean that the children in the home have been maltreated or abused, domestic violence is a risk element for maltreatment and abuse. Therefore, CPS staff need to consider any domestic violence in their assessment of risk, and, if necessary, address it in some manner to sufficiently reduce overall risk to children in the home. To that end, it is important that CPS staff be knowledgeable about the dynamics of domestic violence, as well as adept at identifying its presence.

There are specific effects of domestic violence that may result from a child’s exposure to it. These include:

- Increase in the risk of physical, emotional, and psychological harm
- Aggression and anti-social behaviors
- Fearful and intimidated behaviors
- Lower social competence
- Poor academic performance

Some factors that influence the impact of domestic violence on children are:

- The frequency and severity of the violence
- Proximity to the violence
- Whether the violence was recent or in the past
- Exposure to multiple forms of violence
- Age of the child
- Developmental stage when violence began
- Gender of the child
- Relationship with the offending adult

For a general overview of domestic violence, indicators, and strategies for investigating CPS cases involving DV, see the video entitled "Domestic Violence: An Overview" (http://ocfs.ny.gov/main/dv/child_welfare.asp).

1. Indicators of domestic violence

Domestic violence is not an allegation of abuse or neglect. Rather, domestic violence is a risk factor, one that is present in a significant percentage of CPS reports. Therefore, whenever CPS worker respond to a report of suspected child abuse or maltreatment, they must be alert to and sensitive to the presence of domestic violence. There may be indicators of domestic violence specified in the information contained in the Narrative of the Intake Report of suspected child abuse or maltreatment received from the SCR or found in a review of prior SCR history. However, in many cases, the first indicators of domestic violence reveal themselves during the initial contact with either the reported family members or with other individuals who are in a position to assess the immediate risk to the children (See *Investigation/Assessment*, IV.D.1 – IV.D.3). In other cases, indicators of domestic violence may only be identified through a child welfare worker's ongoing contact with and assessment of the family during the provision of protective, preventive or foster care services, as the worker develops a better understanding of the family dynamics.

The most important source of information about suspected domestic violence in a CPS case is the non-offending parent (NOP). However, the non-offending parent may not be ready or able to discuss the existence of domestic violence because of the non-offending parent's fear of the DV offender, possible trepidation about how CPS staff might react regarding the non-offending parent's children, and/or possible shame of being a victim of domestic violence. It may take quite a long time for the non-offending parent to develop a trusting relationship with child welfare staff.

One strategy for developing a more trusting relationship with a non-offending parent s to display concern for the non-offending parent's safety and well-being along with the required CPS focus on the safety of the children in the home and their level of risk of harm.

A CPS caseworker may find one or more of the following indicators of domestic violence when visiting a home:

- The person suspected of being a victim of domestic violence offers inconsistent explanations for bruises, fractures, or other injuries on his or her body that are in various stages of healing. Common sites of injury include the face, head, chest, and abdomen.
- The person suspected of being a victim of domestic violence has "accidents" during a pregnancy. Domestic violence sometimes begins or increases when a woman is pregnant.
- The person suspected of being a victim of domestic violence substantially delays seeking needed medical treatment.
- The person suspected of being a victim of domestic violence has a history of repeated accidents and emergency room visits. Emergency room visits are often made at different hospitals.
- The person suspected of being a victim of domestic violence feels sad, lethargic, or depressed and/or admits having thoughts of suicide.
- The person suspected of being a victim of domestic reports psychosomatic and emotional complaints (e.g., chest pain, choking sensation, hyperventilation, sleep, or eating disorders).

- The person suspected of being a victim of domestic is embarrassed and/or evasive when asked questions about an injury or abuse.
- The person suspected of being a victim of domestic violence exhibits anxiety and fear in the presence of his/her partner.
- The person suspected of being a victim of domestic violence offers apologies or explanations for his/her partner's behavior.

2. Considerations for conducting a CPS investigation when there is domestic violence

CPS reports in which domestic violence is an element in the family home require CPS to use of their critical thinking. CPS should try to recognize any biases that they may have regarding domestic violence and to set them aside. It is important that they suspend judgment, try to develop as many hypotheses as possible, understand that the simplest solutions such as leaving the situation are not always the safest strategies for the non-offending parent or the children, and try to view the situation from the point of view of the family members. It is important that CPS recognize the limitations of their knowledge and draw upon available resources, as needed, such as a supervisor, a DV advocate, materials from CPS training on domestic violence such as a list of questions for Identifying DV, or some other resource.

Where there is a domestic violence expert co-located at CPS offices, CPS should always consult with such an expert when domestic violence is, is thought to be a factor in the family. Where the LDSS does not a have a DV co-location program, CPS should consider consulting with staff from a Domestic Violence program in the community if domestic violence is a factor in a case.

Conducting interviews

Domestic violence is an issue of power and control. Consequently, the DV offender may try to prevent the non-offending parent from speaking with CPS. The non-offending parent may be fearful of disclosing any acts that the DV offender may have taken against either children in the home or the victim.

It is commonly accepted best practice for CPS to complete an interview with the non-offending parent before speaking to children or the DV offender, if possible. This enables CPS to better engage and engender the trust of the non-offending parent and to assess and plan for danger and risks. All interviews conducted with the adults during an investigation should be conducted separately.

When working with non-offending parents, CPS may find it helpful to reference the OCFS document, *Helpful Things to Say to or Ask a Non-Offending Parent (NOP)*, which can be found on the OCFS website at: http://ocfs.ny.gov/main/dv/child_welfare.asp.

Including the DV offender

CPS may be reluctant to engage the DV offender during a CPS investigation. However, to effectively assess safety and risk to children, it is necessary to view the family holistically. It is not possible to achieve meaningful change in a family if one member of the family is excluded from the process.

There are ways to effectively engage the DV offender in a domestic violence situation. It requires finding a fine balance between engaging the DV offender while attending carefully to the safety of the children and the non-offending parent. In some cases, it may be possible to leverage the DV offender's concern for his children to motivate the DV offender to change his behavior.

When the DV offender is a person legally responsible for the child(ren) named in the report, the DV offender must be part of the investigative process and CPS must work to engage and interview the DV offender. Caseworkers may wish to refer to information provided by OCFS regarding working with DV offenders for more details and strategies:

- *Helpful Things to Say or Ask an Offending Parent,* which can be found on the OCFS website at http://ocfs.ny.gov/main/dv/child_welfare.asp. Direct access at: http://ocfs.ny.gov/main/dv/Helpful%20Things%20to%20Say%20or%20Ask%20a%20DV%20Offender.pdf
- *Practice Considerations for Locating and Engaging Fathers in Domestic Violence Situations* http://ocfs.ny.gov/main/dv/Locating%20and%20Engaginng%20Fathers.pdf

CPS should also refer to **Section H** of this chapter, which addresses working with law enforcement, if they have concerns about criminality or safety.

Cultural considerations

Victims of domestic violence who are undocumented face unique barriers, especially if their partner is a U.S. citizen or has some sort of legal status here. Often DV offenders use the non-offending parent's undocumented status as a way to threaten her, e.g., "You will be deported. You will never see the children again." They may also use her status to isolate her by making her afraid to talk to other people, or give her inaccurate information about what she can expect from police or others who might help her. Women who are undocumented may be eligible for a visa that will enable them to remain in this country. Such women MUST be referred to DV agencies for help getting connected to an immigration attorney who can help them through the process of applying for a U-Visa or with help for any kind of immigration issue.

When any family members in a family where there is domestic violence have Limited English Proficiency, it is especially important to obtain language assistance services to enable CPS to communicate with those individuals. People from different cultures sometimes have culturally-based ideas that are integral to the existence of domestic violence in the family, and these and all other aspects of a CPS case cannot be addressed effectively by CPS without clear communication between CPS and family members.

3. CPS interventions when there is domestic violence

CPS is required to investigate reports of suspected abuse or maltreatment swiftly, to assess the safety of and risk to the child(ren) in the home, to identify existing impediments to safety and also strengths that may mitigate the safety deficits, and to provide rehabilitative services to the child(ren) and the adults legally responsible for such child(ren) in order to prevent future abuse or maltreatment.

When domestic violence is present in a child abuse or maltreatment case, CPS must take into account the existence of such violence in order to develop intervention strategies that will adequately protect the child(ren) in the home. Domestic violence may well affect the non-offending parent's ability to parent and protect the child(ren) in the home. Consequently, CPS may need to use intervention strategies for families afflicted by domestic violence that are different from the intervention strategies used in cases where domestic violence is not a factor

Whether there is domestic violence in the home or not, if CPS determines that the children in the home have been abused or maltreated, or are at risk of abuse or maltreatment CPS must assess the risk to the children and develop an intervention plan for the safety of the children. The intervention plan will be case specific and consider the resources that are available locally.

Where there is domestic violence, the non-offending parent may have previously developed and instituted safety strategies. He/she should be used as a resource in a formulating a CPS safety plan. CPS should also work with the non-offending parent on a DV safety plan. The non-offending parent may not only be able to provide important knowledge that can strengthen such a plan, but may also be more likely to implement a plan the she or he helped to design than one that is imposed. Where there is domestic violence in the home, to achieve safety for the children, it may be necessary for CPS to also work with the police and local domestic violence programs to address the child protective and domestic violence issues.

The intervention plan should be designed to eliminate the abuse or maltreatment of the children and include services aimed at addressing the conditions, including violence against the adult victims, that are jeopardizing the safety of the child(ren). Intervention plans must consider the non-offending parent's capacity to protect the child(ren) from the perpetrator, while respecting, as much as possible, the choices that the non-offending parent makes on behalf of herself and the child(ren) in the home. It is best practice to explore with the non-offending parent any strategies she/he used to protect the children prior to child protective involvement. CPS intervention strategy should strive to both protect the child(ren) *and* to protect and assist the abused adult.

It is important for CPS to realize that the non-offending parent's strategies may not make logical sense to CPS or be what CPS think should be done, but should not be rejected outright because of that. CPS needs to maintain an open dialogue with the non-offending parent as a safety plan is developed. The non-offending parent is the expert in the situation and her/his knowledge of the perpetrator's triggers and patterns of violence are critical to formulating a safety plan that helps keep the children safe.

In some cases, an appropriate intervention plan may include offering the family various prevention services; however, services that do not recognize the power imbalance between the adults may be ineffective and possibly dangerous to the adult victim. For example, standard marriage or couple counseling is not considered appropriate or safe as treatment for a domestic violence perpetrator and his victim. Treatment that consists of generalized anger management is also not appropriate for a DV offender.

Orders of Protection

If the domestic violence perpetrator poses an immediate risk to the child(ren) and the non-offending parent is willing to have the perpetrator removed from the home, the intervention strategy may involve helping the non-offending parent to initiate proceedings against the perpetrator in Family Court under Article 8 of the Family Court Act or to press criminal charges against the perpetrator. The non-offending parent may seek a temporary order of protection requiring the DV offender to remain away from the home or from the individuals in the family. If the non-offending parent does not want to or does not feel safe in pursuing such actions, but nonetheless is willing to have the perpetrator removed from the home, CPS itself could seek such a temporary order of protection from the Family Court under Article 10 of the Family Court Act (See *Family Court Proceedings*, IV.J.1 – IV.J.6). In fact, it is often a better idea for CPS to ask for a court order to remove the DV offender from the home than to have the non-offending parent request such an order. This strategy often focusses the DV offender's anger on CPS rather than on the non-offending parent, reducing the danger to the non-offending parent and other family members. Removing the abusive adult from the home will usually be less disruptive to the child(ren) than placing the child(ren) in foster care. Before taking this action, however, CPS should assess with the non-offending parent whether this course of action could place the non-offending parent and/or the children at an increased risk of harm.

The non-offending parent cannot be held responsible for enforcing an order of protection against the offender. If the non-offending parent and/or CPS believes that a temporary order of protection would not be effective in barring the perpetrator from the home, then the proposed intervention plan could involve an immediate referral of the non-offending parent and the child(ren) to a residential program for victims of domestic violence. However, non-offending parents should never be *forced* to leave, as this can increase the danger to children and to the non-offending parent. If the non-offending parent is resistant to leaving, CPS must try to initiate a discussion about the non-offending parent's thinking about it. CPS should try to address the non-offending parent's reasons, such as loss of income or needing transportation to a job if she would be leaving a vehicle behind, by working with the non-offending parent to develop strategies that may make leaving an option. If it is not safe to leave, other options should be investigated. It has been well established that, in situations of domestic violence, non-offending parents and their families are at the greatest risk while in the process of leaving an offender and immediately after leaving. In order to offer the intervention strategy of leaving to the non-offending parent, CPS needs to know what shelter services are available in the community and the LDSS's policies and procedures are for referring a non-offending parent to such services. If appropriate, a DV Safety plan can be developed with a non-offending parent so as to reduce risk to the child(ren) while the family remains intact. Please be aware that residential (and non-residential) domestic violence services are only provided on a voluntary basis, and such service providers will only serve the non-offending parent and the non-offending parent's children if the non-offending parent is voluntarily seeking such service.

It may be necessary to remove children from a parent, guardian, or other person legally responsible who is not actually inflicting harm on the children if that parent or other caregiver cannot, or will not, take appropriate action to protect the children from another person who is inflicting harm to the children. A removal may also be necessary if the risk of harm to the children is so immediate that CPS cannot, at the time, provide the non-offending parent any time to work on the his or her own plan to separate the children from the abusive adult. If possible, and if it is consistent with protecting the safety of the children, CPS should not remove the child(ren) until the non-offending parent has been informed of the risk to the child(ren) caused by their remaining in the home under the present circumstances. CPS should also inform the non-offending parent that the primary role of CPS is to protect the child(ren). If the children are removed, CPS must also consider that the removal may create a threat to the non-offending parent's safety and work with that parent to address any such danger.

Whenever possible, and taking into consideration the non-offending parent's preferred safety plan and reasons for that plan, CPS should explain to the non-offending parent the possible implications of actions that she or he may take, including the implications of the actions that the person may be unwilling or unable to take. If the child(ren) are removed from the home, that should not preclude CPS from maintaining involvement with the non-offending parent in an effort to develop a permanent safety plan for the child(ren) and the non-offending parent.

4. CPS determination decisions in relation to domestic violence

To make a determination that a parent or person legally responsible abused or maltreated his/her child, including in situations involving domestic violence:

- There must be impairment or immediate danger of impairment of a child's condition; *and*
- The parent must have failed to exercise a minimum degree of care; *and*

- There must be a link or causal connection between the failure to exercise a minimum degree of care and the impairment or the imminent danger of impairment of the child's condition.

The investigation of a report of suspected abuse or maltreatment involving a family with domestic violence issues must be conducted using the same standards and legal definitions as any other report of suspected child abuse and maltreatment.

Nicholson, et al. v. Scoppetta, et al.[29]

In the 2004 New York State Court of Appeals decision of *Nicholson, et al. v. Scoppetta, et al.*[30] (See **Chapter 14,** *Appendices*), the Court stated that ***when the sole allegation of neglect (i.e. maltreatment) is that the parent or other person legally responsible for a child allows the child to witness domestic violence against a child's caretaker, this alone does not constitute maltreatment and a report against a non-offending parent should not be indicated on this basis.*** The Court stated that for a finding of neglect, the following conditions must apply: there must be impairment of a child's condition, or imminent danger that the child will become impaired, *and* there must be a failure to provide a minimum degree of care, and these two circumstances must be connected.

- The Court wrote that impairment of mental or emotional condition means "a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy."
- The court also stated that imminent danger must be near or impending, not merely possible.
- The Court operationalized the term "minimum degree of care" by posing the question, "Would a reasonable and prudent parent have so acted under the circumstances then and there existing?" The Court concluded that, where there is domestic violence, a fact-based inquiry must be made based upon whether the non-offending parent exercised a minimum degree of care, acting in the manner of a reasonable and prudent parent. The inquiry must consider the severity and frequency of the violence and the resources and options available to the non-offending parent, and must include consideration of the risks attendant to leaving, risks attendant to staying and suffering continued abuse, the risks attendant to seeking assistance through government channels, or that might be created by criminal prosecution of the offending parent, or by relocation. Furthermore, when applying the minimum degree of care standard to a situation in which a child is harmed or is at imminent risk of being harmed because of an incident and/or pattern of domestic violence, it would generally be the case that the offending parent should be a subject of the report since the battering and other forms of domestic violence are not the actions of a "reasonable and prudent" parent.

The Court gave two examples where a non-offending parent could be found to have neglected his or her child: one where the non-offending parent acknowledged the child knew of repeated violence and had reason to be afraid of the DV offender, yet the parent allowed the DV offender

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[29] For a more complete explanation of the implications of this decision for CPS, see 04-OCFS-LCM-22, *Summary of New York State Court of Appeals Decision, Nicholson, et al. v. Scopetta, et al.*

[30] *Nicholson v Scopetta*. October 26, 2004. Court of Appeals of New York.

to return to their home several times; and another where the child was regularly or continuously exposed to extremely violent conduct between the parents and there was proof of the fear and distress felt by the child as a result of long exposure to the violence. However, the Court was clear that if the sole allegation is that the parent was abused (i.e., was a victim of domestic violence) and the child witnessed the abuse, but there is no evidence of impairment to the child, a determination of maltreatment could not be made.

5. Coordination in cases with domestic violence

a. *Law enforcement*

New York State Law (Criminal Procedure Law 140.10) requires police to makes an arrest when they have reasonable cause to believe that an order of protection has been violated or a felony or family offense misdemeanor has been committed by one family or household member against another. Regardless of whether an arrest is made or not, when a police officer responds to an alleged domestic violence incident, the officer is legally required to complete a Domestic Violence Incident Report (DIR). The report must document the officer's investigation and the alleged victim's statement, and must immediately be given to the alleged victim. The police department is required to keep Domestic Violence Incident Reports for at least four years. CPS can access these from the police. Some LDSSs have direct access to a statewide register of all reports.

b. *Community resources / domestic violence programs*

To best assist non-offending parents, CPS should develop working relationships with the community's domestic violence programs. A staff person (advocate) from a residential domestic violence program is one of the best-trained persons in the community to help a non-offending parent obtain needed services. The advocate can assist the non-offending parent with legal, housing, and financial support needs.

It may be helpful for CPSs to enter into written interagency agreements with local domestic violence programs to establish the basis and conditions for coordinating the delivery of services to non-offending parents and their children in CPS cases who are affected by domestic violence. Such written agreements should include the following:

- the specific purposes, roles, and responsibilities of the cooperating agencies;
- procedures for referrals between agencies;
- procedures for conducting Child Protective Services interviews;
- establishment of channels of communication to facilitate the provision of needed services for family members and to maintain their safety;
- a requirement that each respective agency provide the other agency with timely training about, and copies of, agency policies, procedures, forms and regulations; and
- the confidentiality requirements pertaining to information regarding CPS reports and domestic violence program recipients. (See **Chapter 13, Section B,** *Access to CPS records.*)

Several LDSSs have entered into formal collaborations with domestic violence service providers wherein a domestic violence advocate(s) is co-located at the LDSS, usually within CPS unit. While each program differs somewhat, typically the advocate goes with CPS on home visits in cases where domestic violence is believed to be occurring. The advocate also

is available CPS to consult with at any time and to support CPS in linking non-offending parents with appropriate residential and non-residential services in the community. Based on feedback from counties that have these formal collaborations, OCFS strongly recommends that LDSSs consider engaging in such collaborations., These collaborations build up CPS staff expertise in identifying domestic violence and in work with non-offending parents, and enable CPS to better support children and non-offending parents in securing safety.

c. *Reports involving person(s) residing in residential programs for victims of domestic violence*

When a CPS receives a report from the SCR involving children or adults currently residing in a residential program for victims of domestic violence or a safe home, their access to the residential facility or safe home to communicate with those persons is subject to the regulations at 18 NYCRR 452.10(d). In any circumstance in which the *subject* of the report is residing in such a facility, the facility must allow CPS access to interview the subject of the report in the facility. A residential program for victims of domestic violence or a safe home must also provide access to CPS to interview a resident when the LDSS is authorized to do so by a court order. However, CPS should not visit a residential program for victims of domestic violence unannounced. Furthermore, they may only visit if they are investigating a report. Best practice is for CPS to develop a working agreement with any shelter it deals with that describes a procedure for visits that CPS and the program both agree to.

If CPS wishes to interview a resident who is not the subject of a report, CPS may only interview the person at the residential facility if the rules and procedures of the specific facility permit it *and* the individual to be interviewed agrees. However, there is no regulatory impediment to CPS interviewing residents of a residential program for victims of domestic violence at a location other than the facility or safe house.

CPS must not reveal the location of the residence. This includes be careful not to divulge the location in any part of the record that may be made available to the subject of the report or other persons named in the report if they request records of the report at a later date.

O. Determinations / Investigation conclusions

1. Standards for making a determination

For each report it investigates, the CPS must determine within 60 days of the receipt of the report whether to indicate or unfound the report. If the investigation reveals some credible evidence that abuse or maltreatment exists, the report must be indicated. If the investigation does not find some credible evidence of abuse or maltreatment, the report is unfounded and sealed. (See **Chapter 14,** *Appendices*, XI.E)

When a CPS concludes its investigation, it considers, weighs and evaluates all the information that has been gathered and documented in the case record to determine whether or not to substantiate each allegation in the report. The information obtained should be applied to the operational definitions of child abuse and maltreatment (See **Chapter 14,** *Appendices,* XI.D) to determine if some credible evidence exists as to whether a child has been or continues to be abused or maltreated/neglected, as defined in Section 1012 of the Family Court Act (FCA). When making a a determination, CPS must individually address all allegations in the report. If any allegation is substantiated, the report is determined to be "indicated". If no allegations are substantiated, the report is determined to be unfounded.

"Maltreatment" and "Neglect"

Please note that the Social Services Law uses the term "maltreatment" while the Family Court Act uses the term "neglect". Historically, the term "maltreatment" included both "neglect" as defined in the Family Court Act and "neglected child in residential care". The latter term was used until June 2013 to define maltreatment of children in certain types of residential facilities, and investigations of "neglected children in residential care" were conducted by state agencies (OCFS and the Commission on Quality for Care and Advocacy for Persons with Disabilities). In June 2013, the New York State Justice Center for the Protection of People with Special Needs started operating, and that agency then became responsible for all investigations that involve institutional residential care. Nevertheless, the term" maltreatment" continues to be used in CPS.

SSL §412(2) defines "maltreated child" as a child under eighteen years of age:

(a) defined as neglected by the Family Court Act; OR
(b) who has had serious physical injury inflicted upon him or her by other than accidental means.

a. *Elements of neglect / maltreatment*

- To substantiate an allegation of the neglect of a child made against a parent or other person legally responsible for a child (i.e., to indicate the report of maltreatment), all three of the following elements of neglect/maltreatment must exist and be supported by at least some credible evidence (See **Chapter 14,** *Appendices,* for guidance on what is meant by "some credible evidence."):
- the parent or other person legally responsible for the care of the child failed to exercise a minimum degree of care under the circumstances in question; and
- that failure on the part of the parent or other person legally responsible for the care of the child *caused;*
- the impairment of, or imminent danger of impairment of the child's physical, mental or emotional condition.

The failure to exercise a minimum degree of care refers to a failure:

- in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; OR
- in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired [as in (a) above.]
- In addition, a parent or other person legally responsible for a child should be found to have neglected the child if there is some credible evidence that the person has abandoned the child, in accordance with the definition and criteria set forth in SSL §384-b.

b. *Elements of abuse*

For a parent or other person legally responsible for a child to be responsible for abuse of a child (i.e., to indicate the report), some credible evidence must exist that the parent or other person legally responsible for the child's care:

- inflicted or allowed to be inflicted upon such child physical injury by other than accidental means; or created or allowed to be created a substantial risk of physical injury to such child by other than accidental means; and
- such injury would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- sexually abused a child by: committing, or allowing to be committed against a child a sex offense as defined in several specified sections of the Penal Law, or incest; or using a child for the purpose of or permitting or encouraging such child to engage in prostitution or a sexual performance.

See FCA § 1012(e) and (f) for the exact definitions of child abuse and child neglect.

2. Indicated reports

Notice of indication

If the report is indicated, CPS must provide a Notice of Indication to each subject and any other adult person(s) named in the report within seven days of the date of determination. The Notice must include information about the outcome of the investigation and the subject's rights regarding amendment and to a fair hearing. The request for amendment must be received by the SCR within 90 days of the date of indication. If the SCR does not grant the request for

amendment within 90 days of receipt of the request, the matter will be forwarded for an administrative fair hearing.

The Notice of Indication must be system generated in CONNX and will be pre-filled with the name and address information recorded in the CONNX database. CPS must review and correct or confirm the name and address information before closing the case and sending it for supervisory approval. (See **Chapter 12,** *Notifications.*) The letters available in CONNX are specific to familial reports, foster care reports, or day care reports, and within those categories, there are different Notice of Indication letters for subjects and for other persons named in the report.

If an individual who is legally entitled to a letter has Limited English Proficiency, CPS must provide a Notice of Indication translated into a language that person speaks or otherwise inform the recipient that he or she can receive a written or oral translation of the letter at no charge. Notification letters are, however, available in Spanish in CONNX.

Assessment of ongoing needs before making a determination

Assessments for all indicated reports are required as follows:

- If the report is indicated, but is not being opened for services, the risk assessment must be documented through the Risk Assessment Profile (RAP) *before* the Investigation Conclusion is completed.

  Note: The decision to close an indicated case and not provide any on-going services must conform to regulatory requirements for case closing [18 NYCRR 432.2(c)].(See Case Closing, IV.I.1)
- If the report is indicated and is being opened for services, the Family Assessment and Service Plan (FASP) must be completed within 7 days of indication (if Case Indication Date (CIN) is the Date of Indication).
- If the report is indicated and a services case is already open, a Plan Amendment must be completed within 7 days.

Informing the mandated reporter of the outcome

If a mandated reporter was the source of a report and requested, at intake or any point thereafter, to be informed of the outcome of the investigation, CPS must notify the mandated reporter of the determination. CPS should advise the mandated reporter to place the notice of findings in his or her or the agency's paper record together with the written report prepared by the source of the report. CPS should also stress to the mandated reporter the confidential nature of such records.

3. Unfounded reports

If the report is unfounded, the SCR notifies the subject(s) and any other adult person named in the report of this determination by mail. As with indicated reports, the notification letter that a report has been unfounded is system generated and uses the name and address information provided in the case record. Because of this, it is crucial that CPS review and update all name and address information in the database before closing the report. (See **Chapter 12,** *Notifications***.**)

When determining that a report of suspected child abuse or maltreatment is unfounded, consideration should be given to the need for services other than CPS, particularly if the risk rating is high or very high. If specific services are appropriate and the family is willing to accept them, CPS should make appropriate referrals.

If any person or organization authorized to receive information from the record of an open CPS case [listed in Section 422(4)(A)] has received a copy of the now unfounded report while the investigation was pending, CPS should notify each individual, unit, organization or agency that received a copy of the report of the unfounded determination so they may update their own records.

4. Determining the investigation conclusion closure reason

Once the investigation has been determined as indicated or unfounded, CPS must decide whether to open the case for services or close the case. Consideration should always be given to the family's need for on-going services. The service options should be fully discussed with the family prior to completion of the investigation conclusion.

Services may be appropriate regardless of the outcome of the investigation (i.e., indicated or unfounded). However, services are deemed essential for cases with high or very high risk, to decrease the risk of subsequent child abuse or maltreatment.

The full range of services available include, but are not limited to, child protective and child preventive services. If protective and/or preventive services are not provided to high or very high risk cases, CPS must provide an explanation of why services are not being provided in the progress notes.

If specific services are appropriate and the family is accepting of such services, a service case should be opened. The service case may either be initiated by CPS or referred to another unit for opening. Referrals for community based services may also be made, either in conjunction with an open service case or independently. The decision to provide on-going services is made at the investigation conclusion and is reflected in the worker's selection of one of the following Investigation Conclusion Closure Reasons:

1. **Unfounded; Case open — Services**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. However, preventive services are warranted and have been accepted by the family. Additionally, court-ordered preventive services, court-ordered preventive supervision or voluntary placement may exist.

2. **Unfounded; Closed** — No services required

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. Additionally, none of the following services are required or provided:

   - preventive
   - court-ordered services
   - court-ordered supervision
   - court-ordered placement
   - voluntary placement

3. **Unfounded; Closed — Refused services**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. Preventive services were offered to the family and refused and there is not sufficient evidence to initiate or continue a Family Court action to compel involvement.

4. **Unfounded; Closed — Unable to contact/moved out of jurisdiction**

   You are unable to assess if serious safety factors or risk issues currently exist which warrant or require the provision of child protective services and services cannot be provided, due to one or more of the following circumstances:

   - The current whereabouts of the family are unknown and the family cannot be located.
   - The family has moved out of the current CPS jurisdiction and cannot be located.
   - The family has moved out of New York State.

5. **Unfounded; Closed – Referred to Community Based Services Only**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. The family has been referred to community-based services only. No agency direct or purchase provided services or court ordered services are required or being provided at this time.

6. **Indicated; Case open — CPS required**

   You have assessed that serious safety factors and/or risk issues exist which require the on-going assessment of safety and risk and/or court-ordered CPS placement, court ordered services or supervision currently exist. In addition, preventive services, voluntary foster care placement or non-LDSS custody-relative/resource placement may be requested and provided to the family and/or a PINS/JD placement may exist.

7. **Indicated; Case open — CPS not required**

   You have assessed that no serious safety factors and/or risk issues exist that require an on-going assessment of safety and risk. Preventive services, voluntary foster care placement or non-LDSS custody-relative/resource placement may be requested and provided to the family and/or a PINS/JD placement may exist.

8. **Indicated; Closed — Services refused/unable to take or continue legal action**

   Current serious safety factors or risk issues may exist, however do not place the child(ren) in immediate danger. The family has been offered and subsequently refused appropriate services. Additionally, CPS has assessed that:

   - it would not be in the child's best interest or that there is insufficient evidence to initiate or continue a Family Court action to compel involvement; or
   - CPS sought a court order to compel the subject(s) of an indicated abuse and/or maltreatment report(s) to receive such services, but the court has dismissed the petition and it is not in the child's best interest to continue additional Family Court action.

9. **Indicated; Closed — No services required**

   You have assessed that no serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. Additionally, none of the following services are required or being provided:

   - preventive services
   - court-ordered services
   - court-ordered supervision
   - court-ordered placement
   - voluntary placement

10. **Indicated; Closed — Unable to contact/ moved out of jurisdiction**

    Serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. However, services cannot be provided, as one of the following circumstances exists:

    - The current whereabouts of the family are unknown and the family cannot be located.
    - The family has moved out of the current CPS jurisdiction and cannot be located.
    - The family has moved out of New York State.

11. **Indicated; Closed — No surviving children**

    All of the following circumstances must exist:

    - A DOA/Fatality allegation exists and is substantiated.
    - A DOD was entered for the AB child(ren) associated to the DOA/Fatality allegation.
    - There are no other persons younger than 18 years of age with a role of MA, AB or No Role in the case composition.

12. **Indicated; Closed — Referred to Community Based Services Only**

    You have assessed that no serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. The family has been referred to community-based services only. No agency direct or purchase provided services or court ordered services are required or being provided at this time.

P. Case closing

1. Decision

Before deciding to close a child protective case, which would mean ceasing to provide child protective services, CPS must take the following steps:

- conduct a thorough review of the case record, including events, conversations and correspondence;
- review assessments of the family, including the Safety Assessment, Family Strengths, Needs and Risks Scales and the Risk Assessment, with particular emphasis on the overall case risk rating;
- review the family's accomplishments in achieving the outcomes set forth in the family/children's case record;
- discuss directly with the family and/or with other service providers, the family's response to the termination of protective services for children.

Additionally, before closing a child protective case, all case closing criteria must be met. There are general criteria for case closing that apply for all cases, and specific criteria that apply for cases involving continuing foster care services or mandated preventive services.

The **general criteria for case closing**, which apply to *all* case situations, are:

- the local child protective service can show that all children in the household are assessed to be safe despite the withdrawal of controlling interventions that may have been provided to protect the children and it is concluded that the risk of future abuse or maltreatment has decreased sufficiently; or
- the child protective service has offered rehabilitative services to the children named in indicated abuse and/or maltreatment reports and their families, but such services have been rejected, and the child protective service worker has assessed that it would not be in the best interest of the child to initiate a Family Court petition for a determination that a child is in need of care and protection; or
- the child protective service has sought a Family Court order but the court has dismissed such a petition, and it is not in the child's best interest to continue additional Family Court action.

It is permissible to close a protective case when foster care services are continuing if the general criteria can be met and if:

- all children are freed for adoption; or
- all children are continuing in out-of-home placement with a permanency planning goal of independent living or adult residential care; or
- it is documented in the family and children services plan that the necessity of foster care for all children who are named in the abuse and/or maltreatment report(s) is not presently attributable to the health and safety of the child or parent service needs as defined in 18 NYCRR 432.10(c)(1) and 18 NYCRR 430.10(c)(4).

It is permissible to close a protective services case when one or more children named in the abuse and/or maltreatment reports are receiving mandated preventive services, if all such children are presently at risk of foster care because of reasons that are unrelated to the health

and safety of the child or parental services needs as defined in 18 NYCRR §§ 430.9(c)(1), 430.9(c)(4) and 432.2(c)(iii).

2. Other considerations and procedures for closing a case

Before deciding to close a child protective case which would mean ceasing to provide child protective services, the local child protective service must provide documentation that all case closing requirements have been met.

A child protective services supervisor must approve in writing that the case closing decision has been made in accordance with the requirements of the regulations.

Plan amendment for a case open for protective services

When CPS caseworker decides to close a case that has been open for child protective services, the worker must complete a Plan Amendment.

- To complete the Plan Amendment, the status change "Case Open or Closed for Protective Services" must be selected.
- Additionally, workers must complete a safety assessment and the RAP before selecting this status change.
- Please note, if the risk rating is High or Very High, CPS must clearly explain the decision to remove protective services at this time.
- CPS should document any individual or family strengths and/or resources that support the removal of protective services.
- CPS must complete the Plan Amendment within seven (7) days of closing a case for protective services (i.e., deleting the program choice of "Protective").

The caseworker should inform those individuals who have been actively involved in the case (school personnel, service providers, courts, etc.) of CPS closing.

Caseworkers should adequately prepare the family for the termination of protective services prior to the status change update (i.e., closing date).

In preparing the family, the worker should fully explore and discuss with the family the possible need for services, other than those provided through protective services. Services should be continued or begun, based upon the worker's assessment and the family's acceptance of such services, as warranted.

Additionally, the family should be apprised of the fact that terminating the provision of protective services is not the equivalent of an unfounded investigation. CPS must inform the family that all CPS case records, open and closed, will remain in the SCR database and with the local district, pursuant to state regulations.

Chapter 7: **Investigations in foster homes and child day care programs**

A. Overview A-1

1. Foster care A-1
2. Child day care A-1

B. CPS investigations in foster boarding homes B-1

1. Intake of reports B-1
2. Entering information in CONNX B-1
   a. *Intake checklist window* B-*1*
   b. *Foster home identification window* B-*2*
   c. *Foster care notification window* B-*2*
3. Jurisdictional assignments B-2
4. Changing/updating reports received from SCR B-2
   a. *Coding changes* B-*2*
   b. *Need for a companion report* B-*3*
   c. *Updates by the LDSS conducting the investigation* B-*3*
5. Notifications B-3
   a. *Other agencies* B-*3*
   b. *Parents, guardians, and PLRs* B-*4*
   c. *Voluntary authorized agency (VA) responsibility* B-*5*
6. Requirements for investigations in foster boarding homes B-5
7. Sharing of information B-6
8. Determination of an investigation in a foster boarding home B-7
9. Post-determination actions B-8

C. CPS investigations in child day care programs C-1

1. Types of child day care in New York State C-1
2. Oversight responsibility for child day care programs C-2
3. Intake of reports involving day care programs C-3
   a. *Criteria for determining appropriate coding* C-*3*
   b. *Effects of coding a report as day care* C-*4*

c. *Correcting coding of a report*..... C-5
d. *Unregistered/unlicensed child day care programs*..... C-6
4. Requirements for investigations in child day care settings C-6
a. *Concurrent and collaborative investigations*..... C-6
b. *Providing updates*..... C-7
c. *Safety plans*..... C-7
5. Notifications for a day care report C-7
6. Interviewing collateral contacts C-8
7. Safety and risk assessments C-8
8. Sharing information..... C-9
9. Determination of the day are investigation C-9
a. *Informing DCCS or child care oversight agency of the determination*..... C-9
10. Other Actions C-10
a. *Court actions* C-10
b. *Unlicensed/unregistered programs (illegal child care)*..... C-10

Chapter 7: **Investigations in foster homes and child day care programs**

A. Overview

Child protective services (CPS) addresses two types of reports that allege abuse or maltreatment in out-of-home settings. They are coded differently than reports regarding family settings: "foster care" (**FC**) and "day care" (**DC**). These reports allege the abuse or maltreatment of a child perpetrated by someone who cares for children in a setting that is not the child's familial home and that requires state or local government approval and is subject to state laws, regulations, and oversight.

When an SCR report involves a foster boarding home or a child day care program, the CPS in the LDSS where the foster family boarding home or day care program is located has primary responsibility for conducting the CPS investigation. The legal requirements for conducting CPS investigations in out-of-home settings are the same as the requirements for conducting CPS investigations in familial settings. When CPS investigates an **FC** report, however, it must also coordinate and cooperate with OCFS, the LDSS or VA that certified or approved the foster boarding home, and the custodial LDSS.[1]

When CPS investigates a **DC** report, it must also coordinate and cooperate with OCFS and, if applicable, any agency with which OCFS contracts to oversee that program.[2] These agencies also have responsibility for the safety of children in the foster boarding home or day care setting in which the alleged abuse or maltreatment occurred.

Specifically, reports "out of a child's familial home" allege abuse or maltreatment in one of the following settings:

1. Foster care

A child in foster care is alleged to have been abused or maltreated while residing in a foster boarding home that is certified or approved by a local department of social services (LDSS) or voluntary agency (VA) [SSL §424-b].

2. Child day care

A child is alleged to have been abused or maltreated while attending one of the following types of child care programs:[3]

Child care programs licensed or registered by the New York State Office of Children and Family Services (OCFS), and which are:

- Child day care centers located outside of New York City

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[1] "Requirements Relating to CPS Reports Involving Foster Parents" 16-OCFS-ADM-13

[2] "Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Services" (15-OCFS-ADM-10)

[3] For definitions of the various types of day care programs, see SSL §390(1) and 18 NYCRR 413.2(b). For the regulatory standards governing day care programs licensed or registered by OCFS, see 18 NYCRR Parts 414, 416, 417, 418-1 and 418-2.

- Group family day care homes
- Family day care homes
- School-age child care programs
- Small day care centers

Day care centers in New York City that are licensed by the New York City Department of Health and Mental Hygiene (DOHMH)

Any child day care program that is not licensed or registered, but by law is required to be

The provisions for conducting investigations of child day care programs, as described in this chapter, do not pertain to New York City day care centers, or "group day centers" that are licensed by the New York City Department of Health and Mental Hygiene.

The activities described in this chapter do apply to family day care programs, group family day care programs, and school-age child cares programs in New York City that are *supervised* by DOHMH under contract with OCFS and receive licenses and registrations from OCFS.

Reports related to congregate care facilities

Prior to June 30, 2013, the SCR registered reports alleging the abuse or maltreatment of children residing in certain congregate care facilities operated, licensed or supervised by OCFS or certain other state agencies, and OCFS and the former Commission on Quality of Care and Advocacy for Persons with Disabilities were responsible for investigating those reports. Since June 30, 2013, the Justice Center for the Protection of People with Special Needs has been responsible for investigating reports alleging abuse or neglect of children in congregate care settings.

B. CPS investigations in foster boarding homes

1. Intake of reports

When the SCR receives a call reporting suspected child abuse or maltreatment, the staff person at the SCR is required to ask the reporter, "Are any adults in the home foster parents?" If the reporter states that there are foster parents or children in foster care in the home, the SCR should code the report as follows:

When a report alleges that a foster parent abused or maltreated a child in foster care, the SCR codes the report as **FC** and lists the child(ren) in foster care as the abused or maltreated child(ren).

When a report alleges that a foster parent abused or maltreated his or her biological or adopted child (or other child(ren) for whom he/she is legally responsible), the SCR codes the report as **Familial** and lists the biological/adopted child, or other child(ren) for whom the foster parent is legally responsible, as abused or maltreated. The information regarding the subject's status as a foster parent is recorded in the intake checklist.

When there are allegations that a foster parent abused or maltreated both his/her biological or adopted child (or other child(ren) for whom he or she is legally responsible) *and* a child in foster care, the SCR registers two reports, one coded **FC** and the other coded **Familial**. The information regarding the companion reports is documented in the miscellaneous section of each report. **FC** and **Familial** reports *cannot* be consolidated.

The appropriate tasks associated with a **FC** report type are assigned within the CONNECTIONS (CONNX) system, including the notification to agencies[4] that have an interest in the case. An alert is sent to the workload of a caseworker involved with the child's FSS stage or the foster parent's FAD stage in CONNX.

2. Entering information in CONNX

The SCR Specialist who registers an **FC** report performs a Facility Search and completes the Facility Window in CONNX. Completing the Facility Window and properly relating principals to an existing person ID or to a Foster and Adoptive Home Development (FAD) stage prompts CONNX to send an alert to all caseworkers, case managers, and home finders who have an assigned a role in CONNX for either the child in foster care or the foster parent.

a. *Intake checklist window*

The intake checklist window is part of the CPS Intake window used by the SCR. The checklist contains a series of questions that must be answered for most CPS Intakes. One of the questions is, "Are any adults in the home foster parents?" After the CPS Intake is saved and assigned, the questions and responses are available for viewing and printing as part of the existing Intake Report.

[4] "Agencies," as used here, refers to the LDSS with legal custody of the child(ren) in foster care named in the CPS report and, if different, the LDSS or VA that certified or approved the foster home.

b. *Foster home identification window*

The Foster Home Identification window can be accessed by any CPS INV or FAR worker assigned to the case, and allows workers to confirm, update, or correct the entry regarding the presence of foster parents in the home.

c. *Foster care notification window*

The Foster Care Notification window displays information about children in foster care who have been placed in the home of a person involved in a CPS Intake or INV stage. The window also provides information about foster parents who have been named in a CPS report at the Intake or INV stage that involves either children who have been placed in their home, their biological or adopted children, or other children for whom he or she is legally responsible. This window permits LDSSs, VAs, and OCFS Regional Offices to go to one location for a complete list of foster parents and children in foster care who are currently listed in a report at the CPS Intake or INV stage.

For full and accurate information to display on this window, the CPS Intake or INV stage must be correctly linked to the foster parent's Resource ID and the placement information in the CONNX Activities Window must be correct. The window is accessed from the Search/Maintain dropdown menu and is available only to users with the Foster Care Notification business function.

> ***Daily checking***
>
> It is recommended that LDSS, VA, and Regional Office staff check the Foster Care Notification Window on a daily basis

3. Jurisdictional assignments

The SCR assigns a role to the appropriate LDSSs, as follows:

- Primary jurisdiction is assigned to the CPS in the LDSS where the foster home is located.
- Secondary jurisdiction is assigned to all of the following that apply, if known:
  - The LDSS that has care and custody or custody and guardianship of any child(ren) in foster care in the home who has been named as an allegedly abused or maltreated child, if it is a different LDSS than the primary LDSS
  - The LDSS where a subject or child named in the report is currently located, if different than the primary LDSS
  - The OCFS Regional Office that oversees the primary LDSS

4. Changing/updating reports received from SCR

a. *Coding changes*

If the CPS determines that the coding is incorrect *before* beginning the investigation, the CPS should contact the SCR. Only the staff at the SCR can withdraw the report that is coded incorrectly and re-enter the report with the correct coding.

If CPS does not determine that the report was coded incorrectly until *after* beginning its investigation, the CPS should call in a new report to be coded correctly and then close the first report by completing all required tasks and fields and entering a determination. The CPS should state the circumstances of the closing in the progress notes.

b. *Need for a companion report*

If the CPS receives a **FC** report and determines that a **Familial** report needs to be registered because the allegations apply both to child(ren) in foster care and the foster parents' biological and/or adopted child(ren) (or other child for whom he/she is legally responsible), the CPS must make a report to the SCR with an explanation that a **FC** report was already registered, but that a companion **Familial** report also needs to be registered.

The same is true if a **Familial** report is received and a companion **FC** report needs to be registered. **FC** and **Familial** reports *cannot* be consolidated.

c. *Updates by the LDSS conducting the investigation*

After receiving a report involving a foster boarding home, the CPS with primary jurisdiction is responsible for:

- Checking that all appropriate entities have been assigned jurisdiction and that all appropriate entities have been notified, and making any additional assignments for secondary jurisdiction that may be required;
- Checking, correcting, and/or adding demographic information in CONNX for persons named in the report, as appropriate, if it finds that information reported to the SCR was incomplete or contained inaccuracies or misspellings;
- Adding the names of any additional children in foster care in the home and the names of other adults in the home who were not identified in the report from the SCR;
- Adding the names and demographic information of the birth parents of children in foster care named in the report so that they can be notified about the report;
- Conducting person searches in CONNX, as necessitated by any new or revised information, and merging person IDs, where necessary; and
- Checking resource IDs for the foster home and any LDSSs or VAs that were entered by the SCR, correcting inaccuracies found, and entering any relevant resource IDs that were not entered during intake.

5. Notifications

a. *Other agencies*

When a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment of a child in foster care, several agencies have an interest in the report and the safety of the child(ren) in the foster home. These agencies include:

- The LDSS that is conducting the CPS investigation
- The LDSS with legal custody of the child in foster care named in the CPS report
- The LDSS or VA that certified or approved the foster home

These may all may be the same LDSS, but often there will be more than one interested agency. In such cases, the notification, coordination, and cooperation standards addressed in this chapter are vitally important in meeting the safety needs of the child(ren) in the foster home.[5]

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[5] "Requirements Relating to CPS Reports Involving Foster Parents" 16-OCFS-ADM-13

When a child in foster care has been placed outside the county of the LDSS that has custody of the child, the LDSS responsible for conducting the investigation must notify the commissioner of that district that the child has been named in a report of abuse or maltreatment.

The LDSS with primary jurisdiction is responsible for notifying the following agencies when a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment involving a child in foster care:

- The LDSS with legal custody of the child in foster care named in the CPS report
- The LDSS or VA that certified or approved the foster home [SSL §424(6)(b)].

In some cases, they all may be the same LDSS. However, often there will be more than one interested agency. In such cases, the notification, coordination and cooperation standards are vitally important in meeting the safety needs of the child(ren) in the foster home. This information will inform the LDSS or VA that certified or approved the home of any current or potential issues regarding foster parent(s) with whom they have placed children and/or may place additional children in the future.

The CPS with primary jurisdiction must notify the LDSS having care and custody of the child(ren) and notify the agency having supervision over the placement if different from the custodial agency. A model notification form letter to the LDSS with legal custody is in **Chapter 14**, *Appendices.* This letter can also be adapted to send to the LDSS or VA that certified or approved the foster home. The LDSS with primary jurisdiction must keep a copy of any such letter that it sends in the CPS case record, and document when it was sent in the investigation progress notes in CONNX.

This means that the CPS with primary jurisdiction must provide notification of a report of suspected child abuse or maltreatment involving the child in foster care placed in a foster home to the LDSS with legal custody of the child in foster care and, if different, the LDSS or VA that certified or approved the foster home. The CPS with primary jurisdiction would be able to identify the applicable LDSS or VA through CONNX.

The LDSS with primary jurisdiction for investigating the report also must notify the above referenced agencies of the results of the investigation (whether the report was indicated or unfounded) at its conclusion [SSL §424(6)(b)].

The investigating CPS must check that any LDSS with legal custody of a child(ren) in foster care named in the CPS report has been given secondary jurisdiction for the report. These assignments should be made automatically when the SCR registers a **FC** report, but if additional children are later added to the report, or if the appropriate jurisdictional assignments were not made when the report was registered, the investigating CPS must assign the secondary jurisdiction as soon as possible.

b. *Parents, guardians, and PLRs*

CPS must provide Notice of Existence letters, generated in CONNX, to the subject and other persons named in the report. This letter notifies the subject of the report of the existence of the report and provides information regarding the subject's right to appeal. When a report is coded as **FC**, the notifications used are specific to foster care.

In addition, when a report is coded as **FC**, the parents or guardians of a child in foster care alleged to be abused or maltreated in a foster home must be added to the report as "other

persons" and CPS must provide these parents/guardians with a Notice of Existence letter regarding the report and their rights to request a copy of the report.

c. *Voluntary authorized agency (VA) responsibility*

When a VA becomes aware of a CPS report regarding a foster home that it has certified or approved, or a CPS report regarding a child in foster care whom it has placed in the foster home, the VA *must* notify the custodial LDSS of *any* child it has placed in the home who is named in the report.[6]

6. Requirements for investigations in foster boarding homes

Each agency (the LDSS conducting the CPS investigation, the LDSS with legal custody of the child in foster care, or the LDSS or VA that certified or approved the foster home) has its own legal duties and responsibilities to address and support the safety and well-being of the child(ren) in the foster home. Each agency must execute those duties and responsibilities as set forth in applicable statutes, regulations, and policies.

The legal requirements for conducting investigations of reports involving a foster boarding home are the same as for any in-home setting. Accordingly, procedures for foster care investigations are much the same as those used for **Familial** reports [18 NYCRR 432.2(b)(3)]. (See **Chapter 6,** *Child Protective Services Investigations.*)

The regulatory requirements for conducting all investigations, including those for foster boarding homes include, but are not limited to:

- initiating the investigation within 24 hours after receipt of the initial oral report by the local CPS;
- assessing immediate danger of serious harm to the child(ren), which may require a protective intervention;
- within one business day, reviewing all previous SCR records, including unfounded legally sealed reports, involving a subject of the report, child named in the report, or siblings of a child named in the report;
- within one business day, requesting relevant portions of any prior records maintained by another LDSS;
- within five business days, reviewing the LDSS' own records that apply to any prior report;
- reporting deaths to the district attorney and medical examiner or coroner;
- interviewing the subject and the alleged victim;
- delivering or sending the notification letters to the parent(s) or guardian(s) of any child alleged to be abused or maltreated and to any subject of the report, informing them of the existence of the report;
- completing the Initial (7 day) Safety Assessment and a final safety assessment before closing the case; and
- completing the Risk Assessment Profile (RAP).

[6] "Revised Model Contract for Purchase of Foster Care Services" (15-OCFS-ADM-14), p.33

In addition to these requirements, when investigating a report involving a foster boarding home, CPS must contact and interview, as applicable:

- LDSS staff members responsible for care and custody of the child, including staff of any out-of-state agency that is responsible for the care and custody of a child;
- LDSS or VA staff members responsible for certifying or approving the foster boarding home;
- LDSS or VA staff with case planning responsibility for the child;
- other children in the home;
- other household members; and
- staff of social services agencies that provide services to the child named in the report or to other children in the home.

When there is a **Familial** report involving a foster boarding home, CPS should contact the LDSS or VA that certified or approved the foster home and the LDSS with legal custody of child(ren) in foster care in the home.

The following actions are particularly important for **FC** reports:

- obtain a description of the alleged incident and written statements, if possible, from household members of the foster home
- obtain medical documentation, if the child was examined;
- make a separate report to the agency supervising (certifying/approving) the home describing any problems identified or observed in the foster boarding home

The CPS worker must assess the safety of *all* children who reside in the foster boarding home. If the CPS worker investigating an **FC** report has reasonable cause to suspect that a familial child for whom the alleged subject is legally responsible is also being abused or maltreated or is at risk of abuse or maltreatment, then the CPS worker must fulfill his/her responsibility as a mandated reporter and call in a report to the SCR that will be coded **Familial**.

Collaborative home visit

A staff person from the authorized agency that certified or approved the foster boarding home should, if possible, conduct a home visit with the CPS worker investigating the report. During the home visit, the representative from the authorized agency should assess whether the foster boarding home is complying with foster care regulations.

7. Sharing of information

The LDSS conducting the CPS investigation is permitted by law to share CPS report information with the LDSS that has legal custody of the child(ren) in foster care named in the CPS report and, if different, the LDSS or VA that has supervision over the placement [SSL §422(4)(A)(c)]. Accordingly, the investigating CPS may inform such LDSS and/or VA of the allegations.

It is consistent with applicable foster care confidentiality standards for the LDSS with legal custody of child(ren) in foster care named in the report and, if applicable, the LDSS or VA that certified or approved the foster boarding home, to share with the LDSS conducting the CPS investigation any information it has that is relevant to the investigation [SSL §425(1)].

If a CPS worker observes or suspects that a foster parent is not adhering to regulatory standards for foster care, the CPS worker should inform the certifying/approving agency for the foster boarding home about his or her concerns and observations so that the certifying/approving agency can explore those concerns and take any actions that may be necessary to protect children.

The CPS investigating a report involving a foster boarding home also is responsible for informing an LDSS with legal custody of the child(ren) in foster care if there is a removal of a child from the home. They should also share information during the investigation about concerns that could affect the safety of children in the foster boarding home.

While the CPS investigation is pending, the custodial LDSS and, if different, the LDSS or VA that certified or approved the foster home must continue to carry out their statutory, regulatory, and OCFS-established responsibilities. These include, but are not limited to:

- Maintaining appropriate casework contacts
- Case planning
- Assessing the appropriateness of the placement (including assessing the safety of the child(ren)
- Monitoring compliance by the foster parent with applicable foster home certification or approval standards

8. Determination of an investigation in a foster boarding home

The primary objective for any investigation of child abuse or maltreatment is protecting the safety of the child named in the report and any other children in the home. All necessary steps should be taken to achieve this result. An Article 10 Family Court petition cannot be brought against a foster parent for the abuse or neglect of a child in foster care. However, if it appears that a crime may have been committed and it is in the best interests of a child in foster care, CPS should make a referral to the appropriate district attorney.

As with all CPS reports, the CPS must determine within 60 days of the receipt of the report whether the report is indicated or unfounded [SSL §424(7)]. CPS must determine whether to indicate or unfound a report involving a foster boarding home by using the same criteria as is used for all other reports, i.e., whether there is some credible evidence that a child has been abused or maltreated [SSL §412(6) & (7)].

A foster care provider must adhere to state foster care regulations; those regulations are the standards of compliance used by foster care oversight agencies. CPS does not use these standards to determine whether there was abuse or maltreatment of children in the home. The decision of whether to indicate the report must be based on an application of the definitions of child abuse and maltreatment. (See **Chapter 6,** *Child Protective Services Investigations***.**)

This determination process for a CPS report includes:

- Determining whether some credible evidence of abuse or maltreatment exists relative to the definitions of child abuse or maltreatment (See **Appendices,** Section E*, Definitions of child abuse and maltreatment.)*
- If the report is indicated, developing a plan that provides for the continued safety and protection of the child(ren)

- Notifying the subject(s) of the report of the determination of the report and of his/her rights (See **Chapter 12,** *Notifications***.**)
- Notifying all other adult person(s) named in the report, including the parent(s) or guardian(s) of any foster child named in the report) of the determination of the report

The CPS with primary jurisdiction for investigating the report must notify the LDSS with legal custody of the child(ren) in foster care named in the CPS report, the LDSS or VA that certified or approved the foster home, and the applicable OCFS Regional Office of the determination, whether the report was indicated or unfounded [SSL §424(6)(b)].[7] The individual agencies involved in the case, based on their respective roles and responsibilities, should determine what, if any, action must be taken in regard to the placement of children in the home and the certification or approval of the foster home.

9. Post-determination actions

Based on the facts of the case, it may be appropriate to keep the child in foster care in the foster home. In all such cases, the decision and its basis must be sufficiently documented in CONNX.

If the decision is made to remove the child(ren) in foster care from the foster home, the standards set forth in 18 NYCRR 443.5 must be followed [SSL §400]. A child in foster care may be removed from the foster boarding home without notice if the child's health and safety are at risk [18 NYCRR 443.5(a)(1)].

Concerns about whether foster parents should maintain their certification or approval following the indication of a CPS report must be addressed by the LDSS or VA that is responsible for certifying or approving the foster boarding home. Actions that constitute abuse or maltreatment generally are also in violation of certification or approval requirements. If the decision is made to decertify or revoke approval of the foster home, the standards set forth in 18 NYCRR 443.11 apply.

[7] 16-OCFS-ADM-13, "Requirements Relating to CPS Reports Involving Foster Parents"; SSL §424(6)(b)

C. CPS investigations in child day care programs

The legal requirements for conducting and determining investigations in child day care settings are the same as those that apply to investigations in familial settings. Accordingly, the procedures CPS uses are largely the same as for investigations of reports coded **Familial** or **FC.** (See **Chapter 6**, *Child Protective Services Investigations*.) However, reports that involve the provision of child day care require some additional considerations and actions.[8] These include:

CPS may need to assess whether the report has been properly coded, i.e., whether the report should be coded as **DC** (Day Care), **Familial,** or **FC** (Foster Care), or whether the allegations require that there be separate, differently coded reports.

CPS must coordinate with staff from the OCFS Division of Child Care Services (DCCS) and, if applicable, from any other agency with which OCFS has contracted to oversee the child day care program.

The tools for safety assessments and the Risk Assessment Profile (RAP) are not available in CONNX for day care cases. The assessment of family dynamics that is central to the application of these tools is not relevant for assessing the safety of or future risk to children in a non-familial setting. CPS must still assess safety and risk, but without the use of these tools.

When a report alleging the abuse or maltreatment of a child involves a child day care program, the responsibility for conducting the child protective investigation lies with the LDSS in which the day care program is located.

Agencies charged with licensing, registering, and monitoring child day care programs also have a vital interest in the safety of the children in those settings. These agencies also have their own investigative responsibilities, which are focused on the compliance of the child day care program with child day care statutes and regulations that include prohibitions on the abuse or maltreatment of children. Because of the intersection of interests of CPS and child day care oversight agencies, CPS and those agencies should coordinate and collaborate on their investigations.

1. Types of child day care in New York State

Child day care is defined as care for a child on a regular basis that is provided away from the child's residence for less than 24 hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child [SSL §390(1)(a); 18 NYCRR 413.2(a)].[9]

New York State authorizes the licensing and registration of the following types of child day care programs [SSL §390(1)(c)-(f) and 18 NYCRR 413.2(b)]:

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[8] See the OCFS policy, 15-OCFS-ADM-10, "Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Services."

[9] As per 18 NYCRR 413.2(a)(1), relatives within the third degree of consanguinity of the parent(s) or step-parent(s) of the child include: the grandparents of the child; the great-grandparents of the child; the great-great-grandparents of the child; the aunts and uncles of the child, including the spouses of the aunts and uncles; the great-aunts and great-uncles of the child, including the spouses of the great-aunts and great-uncles; the siblings of the child; and the first cousins of the child, including the spouses of the first cousins.

- Family day care homes, which are in-home programs serving more than two children who are not the provider's children in a residence, with a maximum capacity of eight children at one time
- Group family day care homes, which are in-home programs serving seven to 16 children at one time
- Child day care centers outside of New York City, which are operated out-of-home and serve more than six children, with the maximum number of children limited only by space and staffing
- School-age child care programs, which are out-of-home programs that serve seven or more children who are younger than 13 years of age and who attend school, during hours when they are not in school, with the maximum number of children dependent on the availability of space and staff
- Small day care centers, which are out-of-home programs that serve three to six children.

2. Oversight responsibility for child day care programs

The OCFS Division of Child Care Services (DCCS) is responsible for licensing, registering, and monitoring all child day care programs in New York State, except for child day care centers in New York City (also known as group day care centers), which are the responsibility of the New York City Department of Health and Mental Hygiene (DOHMH) [SSL§390(2) & (13)]. DCCS and DOHMH responsibilities include investigating complaints of alleged violations of child day care statutory and regulatory requirements.

In some counties outside of New York City, DCCS contracts with Child Care Resource and Referral (CCR&R) programs and LDSSs to perform the activities necessary to regulate child day care programs. In New York City, DCCS contracts with the New York City Department of Health and Mental Hygiene (DOHMH) to perform licensing/registration functions, including monitoring of child day care programs, except for group day care centers, for which DOHMH has sole responsibility.

When the SCR registers a report that it codes as "Day Care" (**DC**), secondary jurisdiction is given to DCCS and a report is automatically uploaded to the child day care electronic system of record, the Child Care Facility System (CCFS). This system is available to the staff at DCCS offices and to contract agencies responsible for monitoring child day care programs and investigating complaints regarding them. The uploading process notifies DCCS regional offices, DOHMH, and CCR&R programs, as applicable, about CPS reports involving child day care programs. The applicable agency completes a day care complaint report related to the CPS allegations, and a staff person of that agency conducts a day care complaint investigation.

The SCR report is simultaneously transmitted to the LDSS where the child day care program is located, to be investigated by its CPS. In New York City, the Office of Special Investigations (OSI) of the New York City Administration for Children's Services investigates CPS reports involving child day care programs.

The child day care oversight agency's investigation should:

- Determine if there are current safety concerns for children in the day care program, including whether there is a need for the temporary suspension of the program or an interim safety plan

- Determine if there have been or continue to be violations of child day care regulatory standards, which include that there be no abuse or maltreatment of children by day care providers or of any children living in a home where day care is provided
- Determine whether any violations of child day care regulations require corrective actions, fines, limitations, or the closing of the child day care program
- Arrange for the provision of technical assistance to the child day care program, as appropriate, to resolve issues that have created or could create regulatory violations

Child day care regulations prohibit the abuse or maltreatment of a child in a child day care program by an employee, volunteer, or any other person. Regulations for home-based child day care programs also prohibit the abuse or maltreatment of any child who resides in the family or group family day care home, including the child day care provider's children or foster children, regardless of whether the abuse or maltreatment occurred during the provision of child day care [18 NYCRR 414.10(a), 416.10(a), 417.10(a), 418-1.10(a), & 418-2.10(a)].

3. Intake of reports involving day care programs

A report should be coded as **DC** if it alleges that a child has been abused or maltreated while attending a child day care program.

The SCR staff person receiving a call reporting alleged abuse or maltreatment will attempt to determine whether the report should be coded **DC**. This is a simple matter if the abuse or maltreatment is alleged to have occurred in an out-of-home day care setting. When abuse or maltreatment is alleged to have occurred in a home, however, the reporter may not know that there is a child day care program operating in the home. Or, if the reporter states that there is a day care program in the home, the SCR staff person may code the report as **DC**, when in fact the situation is familial and did not occur during the provision of child day care.

> Some child day care programs are in homes, while other child day care programs are operated out-of-home. With in-home programs, the provider's own children may live there, and may or may not be part of the day care program. In out-of-home programs, there are no ongoing familial relationships between providers and children. There sometimes is confusion about a report to the SCR should be coded as **Familial** or **DC**, or whether there should be two reports, one with each designation.

a. *Criteria for determining appropriate coding*

Day care

A report should be coded as **DC** if the report alleges the abuse or maltreatment of a child *while that child is receiving child day care services in a*:

- Licensed or registered child day care program
- Program that is not a licensed or registered child day care program, but is required by law to be licensed or registered. A program must be licensed or registered if it provides child day care:
  - For three or more children at one time, who are not relatives of the day care provider;
  - Away from the home of the children; and
  - For more than three total hours per day but less than 24 hours per day.

Where child care is provided on an informal basis or in a legally-exempt day care program, the report should not be coded as **DC**. A "legally exempt" day care program is a program providing day care but which is not required to be licensed or registered. For example, a home where day care is provided for only two children, or a program where day care is provided for no more than three hours per day would be "legally exempt".

Familial

A report should be coded as **Familial** if the child of a day care provider or other child living in the home of a day care provider is allegedly abused or maltreated outside the provision of child day care.

Foster Care

A report should be coded as **FC** if a foster care child is allegedly abused or maltreated in a home where day care is provided and which is also a foster boarding home.

When a CPS receives a report coded as **Familial** or **FC**, but the child lives in a home where child day care services are provided, CPS should inform the appropriate DCCS Regional Office about the report, provide DCCS with secondary jurisdiction so it can track the status of the investigation, and inform DCCS of the outcome of the investigation. This does not apply to reports that are assigned to the Family Assessment Response (FAR) track. With these reports, CPSs should inform people outside the family about the report only with the permission of the family receiving FAR.

Day Care and Familial (two reports)

If the subject of a report allegedly abuses or maltreats children while providing day care services in a home-based day care program, then the report must be coded in CONNX as **DC**. However, if at least one but not all those children is the subject's child or lives in the home where the day care services are provided, it may be necessary to register a second report to be coded as **Familial**. If a CPS worker investigating a **DC** report has reasonable cause to suspect child abuse or maltreatment of a day care provider's own child, the worker must call the report into the SCR, and the SCR will determine whether to also register a **Familial** report. Similarly, if the day care home is also found to be a foster boarding home, the CPS worker must call in another report, to be coded **FC**. Whenever there are two or more reports that are coded differently, the reports cannot be consolidated because each code generates and disables specific functions in CONNX.

b. *Effects of coding a report as day care*

When a report is coded as **DC**, CONNX disables the availability of safety assessments and the Risk Assessment Profile (RAP), which are not designed to assess safety or risk in a day care program.

The designation of **DC** triggers the use of system-generated notification letters to the subject and other persons named in the report that are specific to and reference day care.

When the SCR codes a report as **DC**, an interface between CONNX and the DCCS child day care electronic system of record automatically enters a report regarding the child day care program into the child day care system of record. In addition, DCCS is assigned a secondary role in the investigation. The assignment of secondary jurisdiction to OCFS is strictly for informational purposes; DCCS does not enter information into CONNX regarding Day Care reports.

The coding of a report as **DC** alerts CPS that it must coordinate with DCCS and/or any other agency that is charged with oversight of the day care program. When a report is designated as **DC**, the CPS and the child day care oversight agency may share information, conduct joint interviews, and coordinate actions.

C. *Correcting coding of a report*

Sometimes, after beginning a CPS investigation that was coded by the SCR as **Familial** or **FC**, CPS determines that the alleged abuse or maltreatment involved a child receiving child day care services**,** and therefore the report should have been coded as **DC**. In other situations, the CPS may realize that a child who was allegedly abused or maltreated in a report that was coded **DC** is the day care provider's biological, adopted (or other child(ren) for whom he or she is legally responsible) or the child(ren) is in foster care, that the incident was unrelated to the provision of day care, and therefore the report should be coded as **Familial** or **FC**. Sometimes, more than one situation may apply, and it may be necessary to register more than one report, each coded differently.

Coding of the report does not match the report circumstances.

If CPS receives a report that involves a child day care program and finds, either initially or after beginning an investigation, that the report is not coded properly, the coding must be corrected so CPS can use the appropriate tools in CONNX and share information about the report with those who should have access to that information. For example, if CPS determines that there should be both a **DC** report and a **Familial** report, parents of children in the day care, who will be named as "other persons" in the **DC** report, will have the right to access information in the *Day Care* report but not in the associated **Familial** report. DCCS or its agent will coordinate its investigation activities with CPS for a **DC** report but not a **Familial** report. Appropriate coding enables DCCS to determine its role in the investigation and appropriately track the progress of the investigation.

If the CPS recognizes a coding error *before* beginning its investigation, the CPS should reject the report, provide the SCR with an explanation of the problem, and request that the report be withdrawn and re-registered with the correct coding.

If the CPS recognizes a coding error *after* beginning its investigation, it should call in a new report to the SCR and fully explain the situation so SCR can determine the best method for handling the situation. In most instances, it will be necessary to register a new report. The CPS should then close the first report by completing all required tasks and fields and entering a determination. The CPS worker should also state the circumstances of the closing in the progress notes and provide the Call ID of the new report. If the report was coded as ***DC***, CPS would *not* have to complete a RAP or safety assessments to close the report. However, if the report was coded as **Familial** or **FC**, CPS would have to complete a RAP and safety assessments to close the report. The CPS worker should also document the circumstances in the new report and reference the Call ID of the closed report.

More than one code is needed to match case circumstances.

In other instances, it would be appropriate to have two reports or more reports - one coded **DC**, alleging the abuse or maltreatment of one or more children who were receiving day care services, and a second (and a third, if warranted) coded **Familial** or **FC**, alleging the abuse or maltreatment of the provider's child or foster child. CPS should maintain the original report and call in a second report. When CPS adds a second report with a different coding and one of the

reports is coded **DC**, the worker must inform the appropriate DCCS regional office about the new report as soon as possible and assign DCCS (upstate daycare) a secondary role.

d. *Unregistered/unlicensed child day care programs*

If CPS determines during an investigation of a report coded as **Familial** or **FC** that child day care is being provided in the home, CPS must inform DCCS about the report, even if it does not appear to be a licensed or registered child day care program. New York State law requires a child day care program to be licensed or registered if it provides child day care for three or more children at one time (who are not relatives of the child day care provider) away from the home of the children for more than three hours per day, but less than 24 hours per day. Notifying DCCS that a child day care program may be operating in the home allows DCCS to determine whether the child care being provided requires a license or a registration. DCCS can then take action to cause a provider who does not have the required license or registration to comply with the law, including requiring the day care operator to cease and desist providing child day care services. If DCCS finds that the program does not need to be licensed or registered, DCCS will cease further involvement in the investigation.

4. Requirements for investigations in child day care settings

The legal requirements for conducting CPS investigations in child day care settings are the same as the requirements for conducting all CPS investigations. (See **Chapter 6,** *Child Protective Services Investigations***.**) The following are additional actions that are applicable to investigations involving child day care programs.

a. *Concurrent and collaborative investigations*

The local CPS should assign a secondary role to DCCS, if it has not already been assigned by the SCR. The assignment is to “Upstate, Day Care.” CPS should contact the appropriate DCCS regional office as soon as possible to begin the process of coordinating the investigations by CPS and DCCS or the agent with which OCFS has contracted for child day care program oversight.

If CPS receives a Day Care report during a time when DCCS staff is not available, such as in the evening or on a weekend or holiday, *CPS must still initiate its investigation within 24 hours of the receipt of the report.* It should then contact DCCS as soon as possible thereafter to initiate coordination.

If a **Familial** report involves a home where there is a day care program, but no child attending day care is alleged to be abused or maltreated, the CPS must assign secondary jurisdiction to DCCS and should collaborate with DCCS in the investigation.

If a **DC** report will be addressed by a multi-disciplinary team (MDT), CPS must inform DCCS of this and, if feasible, facilitate the participation of staff from DCCS or its agent. Use of a Child Advocacy Center is guided by local protocols.

To the extent possible, CPS and the licensor from DCCS or its agent should coordinate interviews when they will be interviewing the same persons. This can reduce trauma for children and subjects and reduce the likelihood of one interview affecting the responses in another interview. CPS and staff of DCCS or its agent maintain their own case notes, but should share them when requested.

It is recommended that, whenever possible, the CPS interview children named in a **DC** report out of the presence of the alleged subject of the report.

b. *Providing updates*

CPS should keep DCCS or its agent up to date with important findings and developments in the case, especially regarding concerns related to the provision of child day care. DCCS or its agent should do the same with CPS. CPS information may be shared either verbally or in writing.

Investigators from both agencies may be able to provide useful information to the other regarding past and current observations of the subject and/or the child day care program. However, CPS cannot share information about previous unfounded reports or reports addressed through a Family Assessment Response, except to the extent that information from such reports has been incorporated into the record of the current CPS investigation.[10]

The investigator from DCCS or its agent can advise CPS about obtaining information about the child day care program. During the CPS investigation, CPS should obtain, if possible:

- A description of the alleged incident and written statements from day care providers and/or staff
- Copies of any pertinent incident reports from the day care director or provider
- Any other relevant information regarding the allegation

c. *Safety plans*

Depending on the circumstances of the case, DCCS or its agent may create a safety plan or limitation for the child day care program to follow until the investigation is resolved, and then monitor adherence to the safety plan; it may suspend the child day care program's license or registration until a determination is made by CPS; or it may not impose additional requirements.

5. Notifications for a day care report

CPS must provide a Notice of Existence regarding the CPS report to all subjects and other persons named in the CPS report, except children under 18 years of age [18 NYCRR 432.2(b)(3)(ii)(f)].

> While it is generally necessary to verbally inform the director of a day care program that there is a report regarding an employee or volunteer in that program, CPS does not provide a Notice of Existence to the director of a child day care program unless that person is named in the report as a subject or other person. The director should not be added as a subject of a report unless there is reasonable cause to suspect that the director has abused or maltreated a child.

When a report alleges the abuse or maltreatment of a child or children attending a child day care program, CPS must provide a Notice of Existence to the parents of any such child originally listed on or later added to the report. In most instances, the SCR will not have the contact information for parents of children in a day care program. CPS should obtain this information, when needed, from the child day care program.

If an investigation reveals that a child or children attending the child day care program, other than the child or children named in the report to the SCR, has been abused or maltreated, that child or those children should be added to the report. This decision may be made through talking

[10] "Sharing of Investigation Information by Child Protective Services and the Office of Children and Family Services, Division of Child Care Service" (15-OCFS-ADM-10)

to the source, interviewing the subject or alleged victim(s), speaking with other staff, having conversations with other children, and/or observation. Children should not be added to the report just because they are in the same child day care program. CPS should add to the report only children who are found to be victims of abuse or maltreatment.

6. Interviewing collateral contacts

When investigating a report involving a child day care program, CPS should obtain information from most of the usual sources. (See **Chapter 6**, *Child Protective Services Investigations*, for more information on required contacts during a CPS investigation.) However, some of the usual collateral contacts may not be relevant for a day care investigation, especially when the abuse or maltreatment is alleged to have occurred in an out-of-home day care setting.

For example, it may not advance the investigation to contact a child's neighbors, as these persons may have no contact with the subject. Similarly, speaking to the child's doctor about whether the child receives adequate medical care would not be relevant when the subject of the report is not responsible for that care. CPS must assess which collateral contacts will contribute to an understanding of the situation and proceed accordingly.

On the other hand, it may be important for CPS to make certain contacts in a day care related investigation that may not apply in a **Familial** or **FC** case. These may include:

- Other children attending the child day care program
- Persons who currently or previously worked or volunteered in the child day care program (including any provider or staff on duty at the time of the alleged incident)
- Parents of other children who attend the child day care program
- Licensors or registrars of DCCS or its contract agency, who have monitored and observed the child day care program
- Other persons, such as physical or speech therapists, food service personnel, etc., who may have information relevant to the allegations in the report and to the safety of the children in the day care program.

7. Safety and risk assessments

The use of OCFS-developed instruments for safety and risk assessments are not required for *DC* reports and are not enabled in CONNX for such reports. These tools depend on the assessment of actions by parents/guardians/PLRs in order to determine current danger or future risk to children. Many of these actions are not the responsibility of a child day care provider or applicable to the relationship between a day care provider and a child in day care.

CPS is nevertheless responsible for assessing both safety and risk as part of its investigation for reports coded as DC. The lack of safety assessment or risk assessment tools in CONNX does not remove the CPS's responsibility for making these assessments. Although CPS need not assign a number to the level of current danger for children or future risk to their safety, the worker must address these issues and must document his/her assessments in progress notes.

Because safety and risk assessment tools are not available for reports coded as **DC**, if CPS determines that allegations in a Day Care report also apply to a day care provider's own biological, adopted or foster child, the CPS must call the SCR to register a second report (or even a third report, where warranted) regarding any such children, to be coded as **Familial** or **FC**.

8. Sharing information

A child protective service may share most CPS information with DCCS and with child care resource and referral agencies in certain circumstances.

When there is a CPS report alleging abuse or maltreatment in a child day care program, DCCS and/or its contracted agent is responsible for conducting both immediate and ongoing assessments of the safety of children in the child day care program in accordance with regulations and for resolving its own complaint. To do this, DCCS or its agent needs details of the CPS investigation, which may include, but are not limited to:

- Specific allegations in the report from the SCR
- Specific evidence, such as statements, results of interviews, pictures, or videos
- Case notes, which would include relevant prior CPS history
- The determination as to whether the subject is indicated

CPS should not share information from prior unfounded reports and from reports addressed through the Family Assessment Response, except to the extent that records from such reports have been incorporated into the record of the current CPS report.

DCCS can obtain some, but not all, information regarding the investigation from CONNX. Direct communication between the CPS and DCCS or its agent can facilitate the timely and thorough sharing of information, as appropriate.

9. Determination of the day care investigation

CPS must determine whether to indicate or unfound a report involving a child day care program by using the same criteria as is used for all other reports, i.e., whether there is some credible evidence that a child has been abused or maltreated [SSL §412(6) & (7)]. Although a child day care provider must adhere to numerous State child day care regulations, those regulations are the standards of compliance to be used by child day care oversight agencies. They are *not* the standards by which CPS should determine whether there was abuse or maltreatment. The decision of whether to indicate must, as for all reports, be based on an application of the definitions of child abuse and child maltreatment (see **Chapter 6,** *Child Protective Services Investigations*), and not on the day care provider's compliance with child day care regulations.

Nevertheless, if a CPS worker observes or suspects that a child day care provider is not adhering to regulatory standards for the provision of child day care, the CPS worker is advised to immediately inform the DCCS about his or her concerns and observations so that DCCS can investigate those concerns and take any actions that may be necessary to protect children.

a. *Informing DCCS or child care oversight agency of the determination*

CPS must inform DCCS or its agent as soon as possible when the CPS has made a determination for a report that is coded as **DC**, or for a report that is coded as **Familial** or **FC** where the subject of the report lives in a home where child day care is provided. The child day care program's license or registration cannot be renewed until all complaints associated with the program are resolved.

Once the CPS and DCCS investigations are resolved, DCCS will determine whether it is necessary to take any additional measures to keep children attending the child day care program safe, such as by developing, extending, or revising a safety plan, or by closing the program.

10. Other actions

The primary objective for an investigation of child abuse or maltreatment is protecting the safety of the child(ren) named in the report, and any other children in the same environment as the child(ren) named in the report. All necessary steps should be taken to achieve this result.

a. *Court actions*

An Article 10 Family Court petition cannot be filed against a day care provider for abuse or maltreatment of a day care child. An Article 10 petition is an option for a day care provider who is the parent, guardian, custodian or other person legally responsible for an abused or maltreated child.

Notwithstanding the above, if it appears that a crime may have been committed and the best interests of a day care child require Criminal Court action, CPS should make a referral to the appropriate district attorney.

b. *Unlicensed/unregistered programs (illegal child care)*

When CPS finds a child day care program that the worker suspects is not licensed or registered but should be, the worker should contact DCCS or its agent to enable them to determine whether the child day care program is operating in compliance with the law.

Chapter 8: **Service provision and development of a FASP with a protective program choice**

A. Overview of statutory requirements for providing services A-1

B. Regulatory requirements for services during the course of an investigation.... B-1

C. Direct provision of services by CPS C-1

1. General requirements for the direct provision of services by CPS C-1
   - *a. Case management* C-*1*
   - *b. Supervisory review of casework decisions* C-*1*
   - *c. Cultural considerations and Limited English Proficiency* C-*2*
2. Casework contact requirements when CPS is the primary service provider C-2
3. Additional guidance regarding service provision C-3
   - *a. Provision of preventive and foster care services* C-*3*
   - *b. Court orders* C-*3*
   - *c. Notification and information sharing* C-*4*
   - *d. Case consultations in preparation for permanency hearings* C-*4*

D. Development of the Family Assessment and Service Plan (FASP) D-1

1. Assignment of case roles D-3
   - *a. CPS monitor* D-*3*
   - *b. Case manager* D-*3*
   - *c. Case planner* D-*3*
   - *d. Caseworker* D-*4*
2. CPS Safety Assessment D-4
3. Family/child information and updates D-5
4. Strengths, Needs, and Risks Assessment D-5
5. Risk Assessment Profile D-5
6. Family Assessment Analysis D-5
7. Service Plan D-6
8. Plan amendments (status changes) D-7

E. CPS as Service Monitor E-1

1. General responsibilities E-1
2. Contacts with service providers E-2
   a. *Face-to-face contact for major change in the FASP* E-2
   b. *Frequency of contacts with service providers* E-2
3. Preparation, review, and approval of the FASP E-2
4. Sharing of information E-3

F. Uniform Case Record F-1

1. Background and purpose F-1
2. Requirements F-1

Chapter 8: **Service Provision and Development of a FASP with a Protective Program Choice**

A. Overview of statutory requirements for providing services

The New York State Social Services Law (SSL) requires that when Child Protective Services (CPS) receive and investigate a report alleging abuse or maltreatment, CPS must:

- Offer to the family of any child believed to be suffering from abuse or maltreatment such services as appear appropriate based on the investigation and evaluation for either the child or the family or both. Prior to offering such services to a family, the CPS worker must explain that there is no legal authority to compel such family to receive services, but may inform the family of the obligation and authority of CPS to petition the Family Court for a determination that a child is in need of care and protection [SSL §424(10)].
- When an appropriate offer of service is refused and CPS determines, or if CPS for any other appropriate reason determines, that the best interests of the child require Family Court or criminal court action, CPS must initiate the appropriate Family Court proceeding or make a referral to the appropriate district attorney, or both [SSL §424(11)].
- Coordinate, provide or arrange for, and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the Family Court [SSL §424(13)].
- Provide supervision and otherwise meet its duties and responsibilities as outlined in the terms and conditions contained in an order of supervision made as part of a Family Court disposition [FCA §1057(b)].

When a case is assigned for Family Assessment Response (FAR), CPS must follow other requirements for provision of services, which are discussed in **Chapter 5,** *Family Assessment Response,* of this manual.

B. Regulatory requirements for services during the course of an investigation

CPS may, where appropriate, provide for or arrange for and coordinate services for children and families named in a CPS report prior to the determination of the report [18 NYCRR 432.2(b)(4)(ii)].

Tools are available to assist CPS in identifying when services are appropriate. Two such tools, which must be used during the investigation, are the Safety Assessment and the Risk Assessment Profile (RAP).

The Safety Assessment is used to determine a child's current level of safety. A preliminary assessment of safety must be completed within seven days of the receipt of a report. If a child is assessed to be in "imminent danger of serious harm," CPS must undertake some form of intervention to support child safety [18 NYCRR 432.2(b)(3)(ii)(c)]. See **Chapter 6,** Section C, *Preliminary and ongoing assessments of safety.*

Once CPS has made a determination regarding the immediate safety of the child and addressed any safety issues by providing services or other means, CPS must complete a RAP prior to the determination of the report. The RAP is an evidence-based assessment tool used to estimate the probability of future abuse or maltreatment, and is used to help guide the worker in determining whether there is a need to develop a service plan to reduce the likelihood of future abuse or maltreatment [18 NYCRR 432.2(b)(3)(iii)(b)]. See **Chapter 6,** Section D, *CPS Risk Assessment Profile and services.*

CPS typically waits until they have completed the RAP and a full investigation of the allegations before they arrange for or provide any rehabilitative (change-oriented) services that are not intended to address immediate safety concerns. This gives CPS enough time and information to accurately assess the risk to the child(ren) and whether there is a need for ongoing services for the child and/or the family.

Appropriate services may be initiated, however, at any time during the investigation [18 NYCRR 432.2(b)(4)(ii)]. For example, services that may not be directly related to a child's immediate health or safety may prevent an immediate deterioration of family functioning. In such a case, services are considered to be essential for decreasing the risk of future abuse or maltreatment. Such services (e.g., protective day care services) may be offered and provided prior to the completion of the investigation. Preventive services may be provided if eligibility criteria are met and the family member signs an application requesting such services. Services provided during the investigation may be delivered directly by the local social services district (LDSS) or through a referral to a provider agency.

Families must be informed that they are not required to accept services. CPS should also inform the family that it has the obligation and authority to petition the Family Court if the family refuses the services and CPS deems that the services are necessary for the child's health or safety [SSL §424(10); 18 NYCRR 432.3(p)].

When services are offered and refused, CPS must determine whether the best interests of the child require court action. If so, CPS must initiate the action in Family Court, make a referral to the appropriate district attorney for criminal

Family Court referrals

Referring a case to Family Court does not mean that the services the worker thinks are appropriate will automatically be put in place. CPS makes its recommendations to the court, but the Family Court judge makes the determination that the judge deems appropriate. Similarly, when CPS refers a case for possible criminal prosecution, the district attorney must determine whether to initiate an indictment.

prosecution, or both [SSL §424(11); 18 NYCRR 432.3(q)]. Regulatory requirements for protective services provided due to an indicated CPS case

CPS is responsible for providing or arranging for rehabilitative services and foster care services, where appropriate, to any child named in an indicated child abuse and/or maltreatment report, and to his or her family. This is to safeguard and protect the child's well-being and development, and to preserve and stabilize family life whenever possible [18 NYCRR 432.2(b)(4)(i)].

The following apply to the provision of services in an indicated case [18 NYCRR 432.2(b)(4)(i) and (iv)]:

- Families must be informed that they cannot be compelled to accept services. CPS workers may also inform the family that if CPS deems that the services are necessary for the child's health or safety, CPS has the obligation and authority to petition the Family Court if the family refuses the services.
- In all cases where subjects of an indicated abuse and/or maltreatment report refuse to accept rehabilitative services and/or foster care services, CPS shall assess whether the best interests of the child require Family Court action to compel the subjects of the report to accept rehabilitative services and/or foster care services, and shall initiate such action whenever necessary, unless there is insufficient evidence to initiate a Family Court petition to compel involvement in such service(s).

C. Direct provision of services by CPS

1. General requirements for the direct provision of services by CPS

a. *Case management*

In cases where CPS is the primary service provider to children and families named in an indicated child protective report, CPS is responsible for case management activities [18 NYCRR 432.2(b)(4)(vii)]. When CPS is the primary service provider to the children named in an indicated child protective services case and their family, CPS is responsible for identifying, utilizing, and coordinating services, both those in the community and those provided by the LDSS, to assist in the rehabilitation of individuals named in an indicated report and to reduce risk to children named in such cases. In coordinating the delivery of rehabilitative services, CPS must ensure that the roles, responsibilities and tasks, and activities of all service providers are clearly defined and that the established Service Plan is being implemented [18 NYCRR 432.2(b)(4)(viii)].

When CPS provides services directly to children and families named in a report of abuse/maltreatment, the CPS worker must ensure that:

- Any safety response initiated or maintained protects the child from immediate danger of serious harm
- Any services planned and/or provided are likely to reduce the risk related to one or more identified risk elements [18 NYCRR 432.2 (b)(4)(v)].

CPS may provide foster care services in addition to protective services for children in a CPS case, as long as it has been determined that foster care placement is necessary to maintain the child's safety, as per the standards set forth in 18 NYCRR 430.10 [18 NYCRR 432.2(b)(4)(xi)].

b. *Supervisory review of casework decisions*

In cases where CPS is the primary service provider to children and families named in indicated child protective report, CPS supervisors must review casework decisions made by CPS. Such review must include, at a minimum, a review of the Service Plan for the case and of the information periodically reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR) [18 NYCRR 432.2(b)(4)(ix)].

CPS supervisors should review the major casework decisions documented in the Service Plan, as well as other parts of the case record, especially those that could be especially vital to achieving the best outcomes for children and families, including, but not limited to:

- Caseworker engagement of parents and children
- The identification and location of absent parents
- The frequency and quality of caseworker visits
- Comprehensiveness of safety, risk, and service needs assessments
- Sufficiency of the documentation to support these assessments

c. *Cultural considerations and Limited English Proficiency*

Cultural differences do not, however, change the definition of abuse or maltreatment, nor do cultural differences excuse or mitigate actions that fall within the definitions of abuse or maltreatment. When working with a family that is from another country or that has a different belief system, ethnicity, religion, or other cultural difference from the CPS worker, the CPS worker must always make an effort to understand and appreciate the particular perspective of the family, which may be affected by those differences. Workers should avoid prejudging family members or making assumptions about their thinking or actions. They should ask the family for their perspective on situations and truly listen to what they say.[1]

CPS staff should be aware of their own biases, values and beliefs and not make decisions based on such biases. Families and CPS serves are diverse. Similarly, CPS staff should not make judgments regarding family members. Some areas about which judgments should not be made include family members' gender identity or expression, disability, or any and all discriminatory bases protected by federal or state law (race, creed, color, national origin, age, gender, religion, sexual orientation, and marital status).

The Civil Rights Act of 1964 requires equal access to services and benefits for all persons, regardless of national origin, when those services are provided by an organization receiving federal funds. To facilitate equal access, CPS must make reasonable efforts to facilitate communication with persons who have Limited English Proficiency (LEP). Reasonable efforts may include:

- Providing written materials in a language that the person understands
- Providing an oral translation of documents or notifications
- Using interpreters for conversations[2]

> ***Appropriate interpreters***
>
> It is not appropriate to use minor children as interpreters. It is also not appropriate to use any person who may have an interest in providing an inaccurate interpretation, such as a person who may be abusive to the LEP person. Whenever possible, it is best practice to always use a bilingual staff person or a professional interpreter for communication with an LEP child or family member.

2. Casework contact requirements when CPS is the primary service provider

CPS must maintain close contact with the family throughout the service provision process and respond appropriately to the family's needs until the case is closed. In cases where CPS is the primary service provider to the child(ren) and the family named in the indicated report of child abuse and maltreatment, CPS must make at least two separate face-to-face contacts per month with the subject and other persons named in the report. At least one of these contacts each month must take place in the subject's home [18 NYCRR 432.2(b)(4)(vi)].

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[1] *Matter of Rodney C*, 91 Misc2d 677 (Fam Ct, Onondaga County 1977).

[2] "Provision of Services to Persons with Limited English Proficiency (LEP)" 16-OCFS-INF-05

These face-to-face contacts are required for timely and continuing reassessment of:

- Child safety
- Risk to the child(ren)
- Ability of the parent(s) or guardians to provide a minimum standard of care
- Progress the parent(s) and child(ren) are making toward achieving the outcomes specified in the service plan
- Case-appropriate planning based on observation of the child(ren)'s natural environment, the child(ren)'s care, and the identified risk elements [18 NYCRR 432.1(o)]

When CPS is coordinating the delivery of rehabilitative services by providers of specialized rehabilitative services, supportive services, or probation services, such providers may make up to six of the contacts that are required during a six-month period. However, only contacts made by the case planner or by the caseworker, as directed by the case planner, can be counted as the required in-home contacts. Furthermore, only two of the contacts made by other service providers may be made by the supportive service providers [18 NYCRR 432.2(b)(4)(vi)].

> ***Calculation of the six-month period***
>
> The initial six-month period commences at the case initiation date (CID) or at the opening of a services case resulting from an indicated CPS case. Subsequent six-month periods are calculated from the Service Plan due date. [18 NYCRR 432.2(b)(4)(vi)]

3. Additional guidance regarding service provision

a. *Provision of preventive and foster care services*

CPS may provide and arrange for preventive services in addition to protective services for child(ren) in the worker's protective services case, as long as the case is eligible for mandated preventive services and the caseworker is directly providing services to the child(ren) named in indicated abuse and/or maltreatment reports and their family [18 NYCRR 432.2 (b)(4)(x)].

CPS may provide foster care services in addition to protective services for the child(ren) in the worker's protective service case, as long as it has been determined that foster care placement was necessary pursuant to the "necessity of placement" regulatory standards set forth in 18 NYCRR 430.10 [18 NYCRR 432.2(b)(4)(xi)].

b. *Court orders*

When the Family Court orders CPS to monitor or supervise a child, respondent, or family regarding an order of adjournment in contemplation of dismissal, order of suspended judgment, placement of a child, order of protection, or order of supervision, CPS must undertake all practicable efforts to carry out the provisions of the order [18 NYCRR 432.2(b)(4)(xiii)(a)].

When an order issued by a Family Court appears to be in conflict with other requirements of CPS service provision, or is unclear, CPS must advise the court and work with the court to resolve the conflict. When CPS is ordered to supervise or monitor the respondent(s) and the family involved, CPS must comply with the applicable notification requirements of the Family Court Act [18 NYCRR 432.2(b)(4)(xiii)(b) & (c)].

c. *Notification and information sharing*

CPS must notify the attorney for the child whenever there are subsequent indicated reports of child abuse or maltreatment in which the respondent is a subject of the report or other person named in the report while an adjournment in contemplation of dismissal, order of suspended judgment, order placing the child, order of protection, order of supervision, or release of the child to the respondent is in effect [FCA §§1039-a and 1052-a].

CPS should convene regular case conferences with all providers to evaluate the Service Plan and is encouraged to invite the attorney for the child. (Such case conferences are in addition to the required Service Plan Reviews, to which the attorney for the child and others must be invited.)

d. *Case consultations in preparation for permanency hearings*

Unless the Service Plan Review will occur within 60 days of the date certain for a permanency hearing, CPS must convene a consultation meeting in preparation for the permanency hearing [18 NYCRR 428.9(b)(1)]. Permanency hearings must be held every six months for any child who has been freed for adoption, including PINS and JDs; any child who has been placed in foster care or placed directly with a non-respondent parent, relative, or suitable person under FCA Article 10; or any child who has been voluntarily placed in foster care [FCA §1089(a)].

The case consultation assists in the development of the permanency hearing report (PHR). It provides an opportunity to discuss the case with the case planner, the child's caseworker (if applicable), and their respective counsel. The consultation must include the case planner and/or the child's caseworker; the child's parents (unless parental rights have been surrendered or terminated, or it can be documented that the parent is unable or unwilling to attend); foster parents, pre-adoptive parents, relatives or suitable persons with whom the child has been placed; and the child, if he/she is age 10 or older. However, a child who is at least 10 but less than 14 years of age is not required to attend if it can be documented that the child is unwilling to attend, or it can be demonstrated that attending would not be in the child's best interests.

A youth in foster care who is 14 years of age or older must participate in the case consultation and has the option to select up to two individuals from the case planning team (other than the case manager, case planner, caseworker or foster parent) to participate in the consultation. For more information, see the OCFS policy directive "Case Planning for Youth in Foster Care 14 Years of Age or Older" (15-OCFS-ADM-22).

The worker must prepare a PHR for the court prior to the permanency hearing. The PHR includes the information needed for the court to make decisions regarding the safety and well-being of the child, including information about the family's progress, the provision of reasonable efforts, and the plan for achieving timely permanency for the child.

D. Development of the Family Assessment and Service Plan (FASP)

The Family Assessment and Service Plan (FASP) is a record of past and current family functioning (including the identification of individual and family strengths), observations of behaviors or conditions that indicate the risk of future abuse or maltreatment, and an overall assessment of the family's service needs. The plan should be developed through a collaborative process, with input from the parents and all children named in an indicated report of child abuse or maltreatment [18 NYCRR 428.1(a) & 428.6(a)].

CPS must assign all active CPS service cases a program choice of "Protective." When a case is assigned a Protective program choice, CPS is then responsible for completing, at a minimum, the following Initial FASP components: Safety Assessment; Family Update; Strengths, Needs and Risks Scales; RAP; Family Assessment Analysis; and Service Plan.

There are several purposes for the FASP, including but not limited to:

- A tool for focusing casework activity on the key outcomes of safety, permanency, and well-being
- A tool for gathering and recording information with the family about their current functioning
- A tool for assisting, supporting, and documenting case decision-making
- A record of plans and steps taken with the family to meet their needs and to achieve the outcomes of safety, permanency, and well-being
- A means of communicating with families about the plans developed with them
- A means of communication among various service providers and entities working with the family
- A means of assessing change or progress with the family
- A basis for supporting legal action when necessary and appropriate to case circumstances
- A historical record of family functioning, child's history, and previous agency intervention
- A guide for supervisors in assessing the effectiveness of casework activity, and providing constructive feedback/guidance to workers
- A guide for casework practice consistent with accepted standards[3]

Ongoing assessments of child and family functioning, needs, and strengths, especially when done in partnership with the family, are important in assisting CPS to meet the desired outcomes of safety, permanency, and well-being for children. The assessments, which are recorded in the FASP, are the basis for determining the aspects of individual and family functioning that need to change in order to achieve the desired outcomes. These assessments establish a foundation for development of the Service Plan.

Each FASP must include, but is not limited to [18 NYCRR 428.6 (a)]:

- A program choice or choices for each child receiving services
- A goal and plan for child permanency

[3] CONNECTIONS Training Module 2: The FASP

- A description of legal activities and their impact on the case
- A thorough and comprehensive assessment or reassessment and analysis of the strengths, needs and problems of the family, the child, and the parent/caretaker
- Immediate actions or controlling interventions which must be taken or have been provided
- The family's view of its needs and concerns
- A plan of services and assistance made in consultation with the family and with each child over 10 years old, whenever possible, which utilizes the family's strengths and addresses the family members' needs and concerns (see box at right)
- The status of the service plan including service availability and a description of the manner of service provision
- The family's progress toward plan achievement
- Essential data relating to the identification and history of the child and family members and a summary which documents the involvement of the parent(s) or guardian, child(ren) and any others in the development of the service plan including their input into the service plan
- Safety assessments in all cases
- Risk assessments in child protective services cases
- Assessments of family functioning

Case planning for youth in foster care

When a child in foster care has attained the age of 14 years, the FASP and any amendments thereto must be developed in consultation with the child. At the option of the child, up to two members of the child's case planning team may be chosen by the child. These two individuals cannot be the child's foster parent(s) or the child's case manager, case planner or case worker. The agency with case management responsibility may reject an individual selected by the child to be a member of the child's case planning team if the agency has good cause to believe that the individual would not act in the child's best interest [18 NYCRR 428.3(i)].

See "Case Planning for Youth in Foster Care 14 Years of Age or Older" (15-OCFS-ADM-22)

The specific requirements for a FASP depend on multiple factors, including: the stage of the case, and the type of FASP determined by the Case Initiation Date (CID), and the previous FASP due date and purpose (i.e., Initial, Comprehensive, Reassessment or Plan Amendment).

For open indicated child abuse and maltreatment cases, the Initial FASP must be completed and approved within seven days of the date of indication. A Comprehensive FASP must be completed within 90 days of the CID [18 NYCRR 428.3(f)(4) and (5)].

The contents of a FASP are summarized below. Please see the OCFS Family Assessment and Services Plan (FASP) Guide for more detailed information on developing and maintaining a FASP.

1. Assignment of case roles

CONNECTIONS (CONNX) requires that each worker on a service case be assigned one of four possible case roles regarding work on a FASP: Case Manager, Case Planner, Caseworker, CPS Monitor. These roles shape and dictate worker responsibilities for assessment, planning, and documentation in the case, including developing and completing the FASP.

Individual LDSS staff and Voluntary Agency staff, where applicable, complete different FASP components and/or case activities based on their assigned roles for the case (i.e., Case Manager, Case Planner, Caseworker, CPS Monitor). The CPS monitor *must* be an employee of CPS [18 NYCRR 428.2(d)]. CPS staff may also fulfill the roles of case manager, case planner, and caseworker, based on the needs of the case; but, in some instances, these roles could be assigned to someone outside of CPS. Specific responsibilities for each of these roles are outlined below.

a. *CPS monitor*

The CPS monitor (also referred to in this manual as the service monitor) is an employee of CPS who is monitoring services being provided by a third-party organization or individual to the child and family in an indicated case of child abuse or maltreatment [18 NYCRR 428.2(d) & 432.1(k)].

The service monitor's activities include reviewing the Safety Assessment and RAP, determining whether appropriate services are being provided, and seeing that the service plan is modified when the child's or family's progress is not sufficient to meet the desired outcomes identified in the service plan [18 NYCRR 432.2(b)(5)]. See Section F of this chapter, "CPS as Service Monitor."

b. *Case manager*

The case manager has the ultimate authority for all key decisions on a service case. There can only be one case manager and he or she must be an employee of the LDSS, except where the LDSS has an OCFS-approved plan to delegate case management responsibilities. The case manager is the person with the responsibility to authorize the provision of services, to approve client eligibility, and to approve the FASP [18 NYCRR 428.2(b) and SSL §153(k)(4)(c)]. If CPS is the primary service provider to a child and his or her family in an indicated case, CPS must be the case manager [18 NYCRR 432.2(b)(4)(vii)].

The case manager approves FASPs submitted by the case planner. The case manager can reject any work submitted, add comments, and send it back to the case planner. If the case manager is also acting as the case planner, the case manager is responsible for the oversight of case activities and submission of the FASP to his/her supervisor for approval.

c. *Case planner*

The case planner has the primary responsibility for providing or coordinating and evaluating the provision of services for the family. Case planning includes referring the child and his or her family to providers of services, as needed, and delineating the roles of the various service providers. The case planner is the author and the editor of the FASP, requiring collaboration among all caseworkers assigned to the case so that a single FASP is developed. Case planning responsibility also includes documenting client progress and adherence to the service plan as well as making casework contacts or arranging for casework contacts, as required [18 NYCRR 428.2(c)].

The case planner can be an employee of the LDSS or a voluntary agency (VA). There can only be one case planner for each service case. There is no requirement, however, that anyone be assigned to this role. If no case planner is assigned, the case manager performs the dual roles of case manager and case planner.

If the service case originated from an open child protective investigation that has not yet been determined, it is strongly recommended that the LDSS retain initial case planning responsibility. In that situation, CPS should assume the role of case planner and complete the Initial FASP. If the report has been indicated, then CPS must assume case planning responsibility [18 NYCRR 432.2(b)(4)(i)].

The case planner usually is responsible for the completion of the safety and risk assessment components of the FASP when the program choice is Protective. It should be noted that if CPS is not the primary service provider, (i.e., CPS is functioning as the Monitor), CPS cannot assume responsibility for completing these components [18 NYCRR 432.2(b)(5)(i)].

In non-Protective cases, the case planner is *always* responsible for the completion of the safety and risk assessment components in the initial FASP. Caseworkers who are not associated to a specific child within CONNX should complete the FASP components that are relevant to their roles in the case and as specified by the case planner.

The case planner is responsible for the entire content of the FASP and acts as the official "author" of the FASP. The case planner must coordinate the documentation of all work in the FASP, review all work, and either accept the FASP as written or revise it accordingly. The case planner submits the FASP to the case manager for approval. If there is no case planner assigned, then the case manager submits the FASP to his/her supervisor for approval.

d. *Caseworker*

All workers other than those listed above who assess, evaluate, make casework contacts, or provide or arrange services for any family member are assigned the role of Caseworker. Caseworkers can be either LDSS or VA employees. One or more caseworkers may be assigned to a services case. Any person who is responsible for completing and documenting family work, providing direct services to the child or family members, and/or entering progress notes in the case record may appropriately be assigned the role of Caseworker. Caseworkers may be "associated" to a particular child in a case. When the association function is used, access to records of child-specific work within the FASP is restricted to the associated caseworker. If there is no "associated" caseworker, the case planner must complete the child-specific work in the FASP, such as the Child Scales and Foster Care Issues components.

2. CPS Safety Assessment

When conducting a Safety Assessment, a worker gathers information and analyzes safety factors and circumstances to determine whether there is an immediate threat to a child which, if not controlled or alleviated, will be likely to cause serious harm to the child [18 NYCRR 428.2(i)].

A FASP must include a Safety Assessment, including documentation, which must be completed in the form, manner, and time prescribed by OCFS. For a full description of safety factors and safety assessments, see **Chapter 6,** Section C, *Preliminary and ongoing assessments of safety.*

3. Family/child information and updates

In the initial FASP, CPS summarizes the family's original presenting needs and concerns that prompted opening the services case, as well as any relevant family background and history that may have an effect on services planning and delivery. For a case with a Protective program choice, the case planner must also summarize key family or child events, services provided to the family and/or child, and pertinent casework activities that occurred since the CID.

4. Strengths, Needs, and Risks Assessment

The Strengths, Needs and Risks component of the FASP consists of a set of scales used to identify and document individual and family strengths and needs, and areas of family functioning that present a risk of future abuse or maltreatment. Scales appear in three separate groupings: Family Scales, Parent/Caretaker Scales, and Child Scales. The Family Scales are available only in the Comprehensive and Reassessment FASPs. They do not appear in the Initial FASP.

5. Risk Assessment Profile

As described in Section B of this chapter, the Risk Assessment Profile (RAP) is an assessment tool that is used to gather specific information about a child's family and analyze it in order to assess the likelihood of future abuse or maltreatment of the child. The RAP analysis, which must be completed during the investigation of each CPS *familial* report, documents the information and examines the inter-relatedness of risk elements affecting family functioning [18 NYCRR 428.2(h) and 432.2(d)]. For more information see, **Chapter 6,** Section D, *CPS Risk Assessment Profile and Services.*

A RAP must also be completed as a part of every FASP (Initial, Comprehensive and Reassessment) when the program choice for the stage is Protective.

6. Family Assessment Analysis

The Family Assessment Analysis, which is part of every FASP, identifies the behaviors and conditions needed for a family to change to support the safety, permanency, and well-being of the children involved and reduce the likelihood of future abuse or maltreatment. It requires the caseworker to assess all the information in the FASP and integrate it into a clear, comprehensive picture of the family situation.

The Family Assessment Analysis includes:

- *Family View:* the family's view of needs, progress, and priorities. This is from the family's perspective, not the worker's.
- *Behaviors/Contributing Factors*: an assessment of primary needs, such as growth, autonomy, self-esteem, etc.
- *Five Elements of Change:* contributing factors which are conditions or variables that influence behavior either individually or in combination with needs and underlying conditions (e.g., mental illness, substance abuse)
- *Underlying Conditions:* beliefs, emotions, etc.

7. Service Plan

The Service Plan describes the case activities and desired outcomes. Its purpose is to:

- Record information gathered about and with the family members
- Serve as a catalyst for evaluations and assessments of the family
- Assist with determining the family's need for services
- Facilitate ongoing planning with the family
- Assess the extent of the family's progress in meeting desired outcomes

Service Plans are required for each Initial, Comprehensive and Reassessment FASP, and may be updated for all Plan Amendment status changes. An Initial Service Plan for an open indicated CPS case must be completed within seven days of the Indication Date (CID). For other cases, the Initial Service Plan must be completed and approved within 30 days of the CID [18 NYCRR 428.3(f)(4)].

The Service Plan comprises four blocks:

- *Problem Statement* identifying the behaviors, circumstances, or conditions that negatively impact the safety, risk, permanency or well-being of the child(ren)
- *Outcome Statement* describing the desired behaviors or conditions that will improve the circumstances for the child(ren)
- *Assessment* of the family's strengths that can be used to support achievement of the desired outcome
- *Identification* of the specific family and service provider activities that need to be taken to achieve the desired outcome

The Service Plan must include a focus on family strengths and resources and, to the extent possible, it should be jointly developed with the family. Service Plan Review teams include all professionals and family members involved in the case. When a youth in the family is 14 years of age or older, that youth may identify two additional individuals to participate on the Service Plan team. The Service Plan should be written in clear language that can be understood by social services providers and family members.[4]

When developing the Service Plan, CPS should offer the family appropriate available services to meet the needs of the child and/or other family members. CPS must apprise the family that CPS has no legal authority to compel the family to accept services, and may also remind them that CPS does have the authority to petition Family Court for a determination that the child is in need of care and protection [SSL §424(10) and (11)]. See **Chapter 12,** *Notifications.*

To develop a Service Plan that is purposeful and offers a specific course of action, CPS must include the following information:

- A clear statement of the behaviors or conditions that need to be addressed and that may be placing the child(ren) at risk of future abuse or maltreatment. Including this in the Problem Statement serves to highlight the focus of the service provision.
- The specific desired outcomes that the service plan aims to achieve. Outcomes are defined as the specific behavior(s) or condition(s) that will demonstrate that the

[4] See "Case Planning for Youth in Foster Care 14 Years of Age or Older" (15-OCFS-ADM-22) and "Strengthening Service Plan Reviews - A Practice Paper" (04-OCFS-INF-09).

problem(s) is being addressed and that risk reduction is occurring. Defining an outcome serves to communicate exactly what must occur to reduce risk and to address the identified problem. Providing target outcomes should also clarify for all service providers the focus of the service provision and what the service provision is intended to accomplish.

- The specific activities that the family and/or child have agreed to implement in order to achieve the specified desired outcomes for child safety, permanency, and well-being.
- The specific service provider activities that will help the family and child achieve successful outcomes.

In summary, when developing a Service Plan, CPS should:

- Consider the family's perception of the problems that necessitated CPS involvement, the family's strengths, and their level of cooperation with CPS and other service providers
- Address the service needs of all family members and determine whether the best interests of the child(ren) require Family Court or Criminal Court action
- Work with the family to develop a plan that CPS and the family agree upon, as this can help to clarify each person's role and responsibilities. The family's direct involvement may also increase the likelihood that they will commit to implementing the service plan.
- Determine the family's financial and programmatic eligibility for any services that the worker and/or the family wish to include in the service plan prior to making service arrangements or referrals

The child(ren)'s parent(s) or guardian(s) must complete and sign an Application for Services (DSS-2921). If the parent or guardian does not consent to signing the application, CPS must sign as the child protective representative.

8. Plan amendments (status changes)

The FASP must be amended whenever there are certain changes in the case status. Changes in case status that require a plan amendment include, but are not limited to [18 NYCRR 428.7]:

- Preventive services are started for a child
- Preventive services are ended for a child
- A case is opened for child protective services
- Child protective services are ended for a case
- A child is removed from his/her home and enters or re-enters foster care
- A child is moved from one foster care setting to another
- A child is removed from his/her home and is placed by a court in the custody of a non-respondent parent, relative, or other suitable person, pursuant to Article 10 of the Family Court Act
- A child becomes legally free for adoption
- A child is discharged (trial or final) from foster care (includes finalization of adoption)

In addition, OCFS *Safety and Permanency Assessment Guidelines* require that when a child in foster care is absent without consent (sometimes referred to as AWOL), this must be recorded in the FASP within 30 days.[5]

The term "absent without consent" refers to a child who has been placed by an authorized agency in a foster care placement, and who disappears, runs away, or is otherwise absent voluntarily or involuntarily without the consent of the person(s) or facility in whose care the child has been placed [18 NYCRR 431.8(a)].

[5] "Protocols and Procedures for Locating and Responding to Children and Youth Missing from Foster Care and Non-Foster Care" (16-OCFS-ADM-09)

E. CPS as Service Monitor

1. General responsibilities

When CPS *is not* the primary service provider for a CPS case, the LDSS is responsible for monitoring the provision of services, including foster care services, to children and families named in open indicated abuse and maltreatment reports [18 NYCRR 432.2(b)(5)(i)].

The purpose of monitoring is to promote the continued safety of the child(ren), determine whether risk reduction activities and services in the Service Plan are being implemented, and see that the Service Plan is modified when progress has been insufficient.

Monitoring includes, but is not limited to, the following tasks [18 NYCRR 432.2(b)(5)]:

- Preparing or receiving, reviewing, and approving the reports required to be submitted to the SCR
- Receiving and reviewing the FASP, which includes assessing:
  - Whether a safety response has been initiated or maintained when necessary, and whether such response protects the child from immediate danger of serious harm
  - Whether services planned and/or provided are likely to reduce the risk related to one or more identified risk elements
  - Whether the family is cooperating with the other service providers
  - Whether the needs of all the children in a household are taken into consideration when formulating a treatment plan
  - Whether the best interests of the child require Family Court or Criminal Court action
- Assessing whether the established service plan is being implemented appropriately by the direct service provider(s)
- Notifying his or her supervisor when there are disagreements between CPS and other service units in the district regarding a plan for care and services. In such instances, if the supervisor cannot resolve the disagreement, the LDSS commissioner must develop procedures for mediating the dispute, which include designating an individual who has responsibility for approving the family and children's service plan. These procedures must be approved by OCFS.
- Seeing that the results of investigations of reports of abuse and/or maltreatment, including any changes in the assessment of future risk of abuse or maltreatment, are incorporated into the formulation of a new treatment plan for the child(ren) and family
- Coordinating appropriate information exchanges between CPS and other service providers

The CPS monitor should make referrals for services only to those service providers that will provide CPS with appropriate feedback. To increase the likelihood that CPS will receive the information it needs to monitor the provision of services, CPS should arrange services with providers in accordance with interagency and intra-agency agreements. Agreements with service providers should designate:

- The service(s) to be provided
- The frequency of the service(s)

- The responsibility of the service provider to provide feedback to CPS, including the type and frequency of this feedback
- CPS's responsibility to monitor the delivery of services

2. Contacts with service providers

OCFS regulations mandate certain contact requirements CPS monitors. Contact requirements serve to provide continuity in the delivery of services and to enable CPS workers to properly assess and oversee the delivery of case-appropriate services.

a. *Face-to-face contact for major change in the FASP*

Regulations require "face-to-face" (i.e., in-person) contact between CPS monitors and the primary service provider(s), including other district staff involved in the case, when a major change in the FASP is being considered [18 NYCRR 432.2(b)(5)(iii)(b)]. Major changes that necessitate face-to-face contact include:

- Returning a child to his/her home or to relatives from a foster care placement
- Placing a child into foster care from his/her present living arrangement
- Terminating the provision of mandated preventive services
- Closing the case with the SCR (terminating child protective services)
- Initiating a Family Court petition under Article 10 of the Family Court Act
- Recommending a significant change in a court disposition for an Article 10 case

CPS monitors may serve as one of the two people required to attend the Service Plan review, but only if the monitor is not providing any services in the case [18 NYCRR 430.12(c)(2)(i)].

b. *Frequency of contacts with service providers*

CPS monitors must have face-to-face contact or a telephone discussion with the primary service provider and other service providers as often as necessary to monitor continuity of service delivery, but **at least once every six months**. Attendance at the Service Plan review constitutes face-to-face contact if the service provider is present at the Service Plan review. During such discussions, CPS monitors must inform the primary service provider about investigations of abuse and/or maltreatment reports.

3. Preparation, review, and approval of the FASP

CPS monitors participate in the preparation, review, and approval of the FASP while there is an open CPS case. When reviewing a FASP, CPS monitors have a continuing responsibility to assess the following:

- Has the safety response been initiated and/or maintained when necessary?
- Does the safety response protect the child(ren) from immediate danger of serious harm?
- Does the Safety Plan adequately protect the child(ren) from immediate danger of serious harm?
- Is the family receiving the treatment services it needs to reduce future risk and resolve identified problems?
- Is the family cooperating with the service providers?
- Are the needs of all the children in the family being taken into consideration?

- Do the best interests of the child(ren) require Family Court or Criminal Court action?

Throughout the family's involvement with CPS, CPS monitors should consider whether the services provided are helping to remediate the issues that required protective services. If upon review of the FASP, the monitor determines that the plan for services does not meet the family's needs, the monitor should discuss this situation with the service provider in person or by telephone. If the provider plans to close the case and the monitor disagrees, there should be an in-person meeting.

In the event that CPS monitors and the service providers cannot resolve their differences, the monitor must notify his/her supervisor. It is the supervisor's responsibility to involve all relevant parties at an administrative level in seeking a resolution of the issue in question.

Similarly, if CPS monitors and other LDSS staff involved in the case are unable to agree about a plan for care and services, the matter must be mediated according to mediation procedures developed by the district. These procedures must designate an individual who is responsible for approving the FASP and is accountable for decisions reached in the mediation process. Mediation processes must be approved by OCFS [18 NYCRR 432.2(b)(5)(iii)(a)(3) & (4)].

4. Sharing of information

CPS service monitors are responsible for the appropriate exchange of information between CPS and other service providers [18 NYCRR 432.2(b)(5)(iii)(e)]. (See **Chapter 13,** Section A.4, *Releasing information to other agencies*.) New York State law allows LDSSs to share confidential information contained in open or indicated CPS reports with providers of services to children and families named in such CPS cases [SSL §422(4)(A)(o)].

When there is an open case with a program choice of Protective, CPS monitors are responsible for informing the primary service provider of any new reports of abuse/maltreatment under investigation. CPS monitors also must see that the results of investigations of reports of abuse and/or maltreatment are incorporated into the formulation of the new Service Plan for the family/child(ren) [18 NYCRR 432.2(b)(5)(d) & (e)].

Whenever there is an adjournment in contemplation of dismissal in effect or a court order in effect that suspends judgment, places the child, orders protection, releases the child to the respondent, or orders supervision, CPS must notify the attorney for the child of any subsequent indicated reports of child abuse or maltreatment in which the respondent is either a subject of the report or other person named in the report [FCA §§1039-a & 1052-a]. See **Chapter 13, Section A.2**, *Access to CPS records*. This function is commonly carried out by the CPS monitor.

In certain circumstances, CPS also must report case status information to the court, the parties, and the attorney for the child no later than 90 days following the issuance of a court order and 60 days prior to the expiration of a court order, unless the court rules that it is not necessary. See **Chapter 9**, Section L, *Expiration of orders*. This function is commonly carried out by the CPS monitor.

F. Uniform Case Record

1. Background and purpose

The New York State Child Welfare Reform Act of 1979 called for the reduction of the number of children requiring foster care placement through the provision of preventive services and goal-oriented services planning and monitoring. The Act required child service planning and uniform case recording, and set forth standards for carrying out those activities.

LDSSs are required to establish and maintain a single uniform case record (UCR) for each family for whom a case record is required [SSL §409-f(1); 18 NYCRR 428.1 and 18 NYCRR 428.3(a)].

Although the content of the UCR has remained largely the same over the years, the form and manner of maintaining certain components has changed with the statewide implementation of CONNX and other smaller changes to the system of record. The case record must be maintained in the form and manner and at such times as required by OCFS.

The UCR consists of the combined case management information maintained in CONNX, the Welfare Management System (WMS) system, and all relevant external paper records. Please refer to CONNECTIONS Case Management Step-by-Step Guide and "Case Management Changes Associated with CONNECTIONS Build 18 (05-OCFS-ADM-02) for the case management information maintained in CONNX.

2. Requirements

LDSSs must establish and maintain a single uniform case record for each family for whom a case record is required [18 NYCRR 428.3(a)]. Recording requirements begin upon registration of a report of suspected child abuse or maltreatment by the SCR. They continue up to and including the determination and establishment of a service case, if applicable [18 NYCRR 428.5(a)].

Each UCR must include, but need not be limited to, the following items in the form and manner prescribed by OCFS:

- A common application form (Form DSS-2921, Application for Services) upon the provision of services and the establishment or opening of a child welfare service case either during or upon completion of the investigation, as warranted
- FASPs at regularly scheduled intervals during the life of a child protective service case
- Plan amendments for each case status change
- A face sheet prepared at the time of application for services, as described in 18 NYCRR 428.4
- Case progress notes in the form and manner prescribed by OCFS, as described in 18 NYCRR 428.5 (see CONNECTIONS Case Management Step-By-Step Guide - Appendix C1)
- All official documents and records of any judicial or administrative proceedings relating to the district's contact with a child and/or a family, including but not limited to records of petitions, permanency hearing reports and notices, court orders, probation reports, voluntary instruments or agreements, fair hearings, administrative reviews, and the results of any examinations or evaluations ordered by the court
- All correspondence between the family, the LDSS, and/or purchase of services agencies (A "purchase of services agency" is a public or private entity from which an LDSS purchases services through a written contract, as described in 18 NYCRR 405.)

- Information received from private or public purchase of services agencies concerning casework contacts with a child and/or his or her family receiving family and children services
- All documentation relating to the establishment of categorical eligibility for any funding source for which the child or family may be eligible [18 NYCRR 428.2(b)(1)]

When children have been placed in foster care, additional information and documents in the UCR must also include:

- Data and official documents relating to the identification and/or history of a child and/or his/her family, including but not limited to copies of birth certificates, documentation of religion, documentation of the child's immigration status, and any consent forms and/or religious preference forms signed by the parent or guardian
- The child's consumer report (credit report) provided in accordance with 18 NYCRR 430.12(k)
- The child's transition plan as required by 18 NYCRR 430.12(j)
- All reports of medical or clinical examinations or consultations, including medical examinations and laboratory tests, psychiatric or psychological examinations or consultations (either court-ordered or voluntary), dental examinations; and medical consent forms signed by the parent or guardian, by the commissioner of the LDSS, or by the child if the child has the capacity to consent, as applicable, regarding medical treatment for any child in foster care placement, including documentation that the child has been assessed for risk factors associated with HIV infection in accordance with 18 NYCRR 441.22(b), and, if one or more risk factors have been identified, a description of the procedures that were followed to arrange for appropriate HIV-related testing including obtaining the necessary written informed consent for such testing
- Educational and/or vocational training reports or evaluations indicating the educational goals and needs of each child in care, including school reports and Committee on Special Education evaluations and/or recommendations [18 NYCRR 428.3(b)(2)]
- If the child has been placed in foster care outside of the state, a report prepared every six months by a caseworker either of the authorized agency with case management and/or case planning responsibility for the child or by the state in which the placement home or facility is located, documenting the caseworker's visit(s) with the child at his or her placement home or facility within the six-month period.

Chapter 9: **Family Court Proceedings (Article 10)**

A. Introduction to Article 10 proceedings A-1

B. Court-ordered CPS investigations B-1

C. Originating an abuse or neglect petition C-1

D. Court-ordered services D-1

E. Temporary orders, other than removal, to safeguard the child E-1

1. Types of orders E-1
   - *a. Order for services E-1*
   - *b. Order for medical procedures E-1*
   - *c. Pre-petition order of protection E-1*
2. Requirement to inform the parent(s) of CPS's intent to seek a court order E-2

F. Removing a child F-1

1. Search for placement resources F-2
   - *a. Notification of identified potential placement resources F-2*
   - *b. Reporting and documenting the search for placement resources F-3*
2. Temporary removal with consent F-3
   - *a. Requirements for removal with consent F-3*
   - *b. Written notice F-3*
   - *c. Documentation requirement for removal with consent F-4*
   - *d. Requirement to file petition F-4*
3. Removal without consent – temporary order F-4
   - *a. Conditions necessary for temporary removal without consent F-4*
   - *b. Timeframe for court hearing F-4*
   - *c. Court determination authorizing temporary removal F-5*
   - *d. Executing the removal F-6*
4. Emergency removal without court order or parental consent F-6
   - *a. When emergency removal is permitted F-6*
   - *b. Required procedures for an emergency removal F-7*
   - *c. Method of serving the notice F-8*

G. Hearings after filing a petition for removal of a child G-1

1. Preliminary orders issued by the court at the hearing..... G-1

a. Removals..... G-1

b. Search for placement resources G-2

c. Placement or remand..... G-2

2. Other orders G-3

a. Medical procedures G-3

b. Visitation by respondent after removal G-3

H. Summonses and required notifications H-1

1. Notice of pendency of a child protective proceeding H-1
2. Notice of removal for a non-custodial parent..... H-2
3. Intervention by other interested people H-2

I. Adjournment in contemplation of dismissal (ACD) I-1

1. Provisions for adjournment in contemplation of dismissal (ACD)..... I-1
2. Factors determining CPS's consent to an ACD..... I-2
3. CPS requirements for ACDs I-2

J. Rules and standards for Family Court hearings J-1

1. Rules and standards of evidence J-1
2. Sequence of hearings J-2
3. Sustaining or dismissing a petition J-2
4. Disposition on adjudication J-3

K. Disposition on adjudication K-1

1. Suspended judgment K-1
2. Release to a non-respondent parent, legal custodian, or guardian..... K-1
3. Placement in foster care K-2

a. Permanency hearings..... K-3

b. Notice of permanency hearings K-3

c. Permanency Hearing Report (PHR)..... K-4

d. Permanency hearing findings..... K-5

e. Placement with relatives K-5

4. Order of protection (OOP) K-6
   a. Orders of protection issued in conjunction with other court orders K-*6*
   b. Orders of protection issued independently of other orders K-*6*
5. Order of supervision K-7
   a. Reporting requirements for orders of supervision K-*8*

L. Expiration of orders L-1

M. Termination of reasonable efforts in aggravated circumstances M-1

N. Termination of parental rights due to severe or repeated abuse N-1

1. Severely abused child N-1
2. Repeatedly abused child N-2

O. Abandoned child (under age one) O-1

Chapter 9: **Family Court Proceedings (Article 10)**

A. Introduction to Article 10 proceedings

The Family Court Act (FCA) Article 10 is "...designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental and emotional well -being. It is designed to provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met [FCA §1011]."

Local Child Protective Services (CPS) provides services to families who are named in reports to the Statewide Central Register of Child Abuse and Maltreatment (SCR) with the intent to prevent future injury or harm to children, to safeguard the welfare of children, and to preserve and stabilize families, whenever possible. Circumstances may require CPS to seek intervention from the Family Court. Family Court has the authority to issue orders of protection, adjudicate child abuse and neglect petitions, compel protective services, and place children in foster care or other out-of-home placements.

Section 1018 of the FCA provides that the court may at any time in an Article 10 proceeding authorize the use of conferencing or mediation to further a plan that fosters the child's health, safety and well-being. The conferencing or mediation may involve interested relatives or other adults who are significant in the life of the child [FCA §1018].

The Family Court may transfer an Article 10 proceeding to Criminal Court if it concludes that the Criminal Court is the proper venue. Likewise, a Criminal Court may transfer a criminal matter to the Family Court if the allegations in a criminal complaint contain allegations of child abuse or maltreatment. The Family Court and Criminal Court are also permitted to hold concurrent proceedings [FCA §1014].

CPS must be knowledgeable of the provisions contained in FCA Article 10, as the law provides for the specific court procedures to intervene with a family and details CPS responsibilities in such proceedings.

This chapter outlines the relevant provisions of FCA Article 10. When CPS or other LDSS staff have legal questions related to FCA Article 10, however, a consultation with the CPS attorney is required. CPS attorneys can also consult with OCFS legal counsel where appropriate.

The matters addressed in this chapter are of utmost importance to the families that are brought before the court, and the actions taken by CPS and by the court can have a significant impact on the lives of those families. CPS should therefore be aware of each family's right to be informed of what is happening in a manner that the family members can understand.

CPS caseworkers should explain (in person, to the extent possible) the potential outcomes of any petitions that are filed in Family Court. They should be aware of any cultural differences and language barriers that may impede the family's ability to understand the situation, and endeavor to address those issues. When any member of the family has Limited English Proficiency (LEP) or a hearing impairment, the CPS must make reasonable efforts to provide an interpreter. Similarly, for LEP and visually impaired persons, CPS must provide translations of vital documents to clearly inform the parent(s) about actions that may affect their families. Once the matter is before the court, it is the responsibility of the Family Court to provide language services where needed.

B. Court-ordered CPS investigations

A Family Court judge may order CPS to conduct an investigation at any time during the Article 10 proceeding, or whenever the court needs to determine whether allegations before the court require the filing of an Article 10 petition.

The Surrogate's Court Procedure Act (SCPA) requires the court to order CPS to investigate under certain circumstances after a petition to obtain temporary guardianship of a pre-adoptive child has been filed [SCPA §1725(4)(c)]. Specifically, a Surrogate's Court judge must issue an order for a CPS investigation under any of these circumstances:

- The court denies an application for temporary guardianship
- The court removes a child from the physical custody of the petitioner seeking temporary guardianship
- An order of temporary guardianship expires before the adoption has been finalized
- The petition for adoption is withdrawn or denied

Investigation findings

If a Family Court judge orders a CPS investigation, CPS is required to report its findings directly to the judge who issued the order (commonly referred to as a "1034 Report"). CPS should also notify the SCR of the investigation and findings [FCA §1034].

C. Originating an abuse or neglect petition

An FCA Article 10 proceeding is originated by the filing of a petition which alleges facts sufficient to establish that a child is an abused or neglected child, as those terms are defined by FCA §1012(e) and (f) [FCA §1031]. CPS or any person authorized by the Family Court may initiate an Article 10 proceeding [FCA §1032]. The parent, guardian or other person legally responsible for the child who is alleged to have abused or neglected the child is referred to as the "respondent" [FCA §1012(a)].

If a child was removed from the home prior to the filing of the petition of abuse or neglect, the petition must also include all of the following information:

- The date and time of removal
- The circumstances necessitating the removal
- Whether the removal was pursuant to FCA §§1021, 1022, or 1024
- If the removal took place without a court order, the reason there was not sufficient time to obtain a pre-removal court order pursuant to FCA §1022 [FCA §1031(e)]

If the petition alleges child abuse, the petition is required by law to contain a notice in conspicuous print that if there is a judicial determination by clear and convincing evidence that the child was severely or repeatedly abused, the determination could constitute a basis to terminate parental rights in a proceeding held pursuant to SSL §384-b [FCA §1031(f)].

CPS may find it necessary to file an Article 10 petition in Family Court during a CPS investigation if court intervention is required to protect the child from being abused or neglected.

Once CPS has filed an Article 10 petition, CPS (CPS) may also seek any temporary court orders it deems necessary for the safety of the child, such as an order of protection, an order for the respondent to participate in services, or an order directing the respondent to undergo an assessment.

D. Court-ordered services

A Family Court judge may order an LDSS official to provide or arrange for services or assistance to the child and his/her family to facilitate these goals:

- The protection of the child
- The rehabilitation of the family
- As appropriate, the discharge of the child from foster care [FCA §1015-a]

A court order requiring the LDSS to provide services may include only those services described in the LDSS's current Comprehensive Annual Services Program Plan.

The provision of court-ordered services or assistance may serve to prevent or eliminate the need for removal of a child from his or her home.

With any order issued under this section of the Family Court Act, the Family Court may require an LDSS official to make periodic progress reports to the court on the implementation of the order. If a Family Court determines that an LDSS official has violated an order, the court has the authority to fine and/or imprison the LDSS official who violated the order [Judiciary Law §753].

E. Temporary orders, other than removal, to safeguard the child

Under federal and state law, LDSSs have a responsibility, where appropriate, to make reasonable efforts to prevent or eliminate the need for removal of the child from the home. The term "reasonable efforts" is not defined in statute or regulation.

Depending on the facts of the case, it may be that measures other than removal can be taken that will avoid the imminent risk to the child's life or health and allow the child to remain in the home. In other cases, because of the circumstances and the risk to the child, no efforts may be reasonable. CPS must document the efforts that were made or the reasons why such efforts were not made.

If the court finds that reasonable efforts were not made, but that such efforts were appropriate under the circumstances, the court must order CPS to provide or arrange for the provision of appropriate services or assistance to the child and the child's family pursuant to FCA §1015-a or §1022(a) & (c).

If CPS requests the court to issue a pre-petition temporary removal order, the court, in determining whether removal of the child is necessary to avoid imminent risk to the child's life or health, must also consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child [FCA §1022(a)].

1. Types of orders

CPS may request the Family Court to issue any of the following orders independent of a request for removal.

a. *Order for services*

The Family Court may order an LDSS official to provide or arrange for the provision of services or assistance to the child and his/her family [FCA §§1015-a, 1022(a) and (c)]. See **Section D** of this chapter, *Court-ordered services*.

b. *Order for medical procedures*

Under certain conditions, the Family Court may issue an order for medical and surgical procedures, when the procedures are necessary to safeguard the life or health of the child and there is not enough time to file a petition and hold a preliminary hearing [FCA §1022(c)].

c. *Pre-petition order of protection*

CPS or any person authorized to initiate an Article 10 proceeding may seek a temporary order of protection on behalf of a parent and/or child [FCA §1029]. When an order of protection is issued, the Family Court may also issue a warrant for the respondent named in the order of protection and require him/her to appear in court. [FCA §1037].

If an Article 10 petition is not filed within 10 days of the order of protection being issued, the order of protection will be vacated [FCA §1029]. A pre-petition order of protection may include any provision that could be included in an order of protection issued after a fact finding of abuse or neglect, and may order the respondent to:

- Stay away from the home, school or business or place of employment of the child, other spouse, parent or person otherwise legally responsible for the child's care and to stay away from any other specific location designated by the court
- Permit a parent, or other person entitled to visitation by a court order or separation agreement, to visit the child at stated periods

- Refrain from committing a family offense (as defined in FCA §812) or any criminal offense against the child, other parent, or any person to whom custody of the child is awarded or from harassing, intimidating, or threatening such persons
- Permit a designated person to enter the residence during a specified period of time to remove personal belongings that are not at issue in the Article 10 proceeding or another proceeding
- Refrain from acts of omission or commission that create an unreasonable risk to the health, safety, and welfare of the child
- Provide for medical care and/or treatment, either directly or by medical or health insurance, for expenses incurred as the result of the incidents that led to the order of protection
- Refrain from injuring or killing, without justification, a companion animal the respondent knows to be owned, possesses, leased, kept, or held by the person protected by the order of protection or a minor residing in such person's household
- Promptly return specified identification documents to the person protected by the order of protection (e.g., birth certificates, DMV registration)
- Observe such other conditions as the court determines are necessary for the purposes of protection

2. Requirement to inform the parent(s) of CPS's intent to seek a court order

CPS must make every reasonable effort, with due regard for any necessity for immediate protective action, to inform the parent or person legally responsible for the child's care (PLR) of CPS's intention to seek a temporary order of removal, an order for the provision of services or assistance, or an order of protection [FCA §1023]. The parent or PLR should be notified in writing, if possible, of:

- The LDSS's intent to apply for the order
- The date and the time the application will be made
- The address of the court where the application will be made
- The right of the parent or PLR to be present at the application and at any hearing held thereon
- The right of the parent or PLR to be represented by counsel, including procedures for obtaining counsel, if indigent [FCA §1023].

If CPS is unable to provide the parent or PLR with written notice prior to the time the application is to be made, CPS should attempt to verbally inform such person(s), either in person or by telephone, of the intent to apply for a temporary order of removal.

F. Removing a child

New York's laws and policies generally aim to keep children with their families. When, however, a child's safety or health is at imminent risk or the child's best interests are not met by remaining with his or her family, concern for the safety of the child takes precedence over family preservation.

The removal of a child from his or her home may occur in any of the following circumstances:

- Temporary removal with consent – The parent or PLR consents to the removal of the child [FCA §1021]
- Pre-petition court order - The Family Court issues an order after a hearing directing the removal of the child before an Article 10 petition has been filed [FCA §1022]
- Emergency removal without court order – CPS or a law enforcement official (e.g., police officer, peace officer) takes the child into protective custody without the consent of the parent or PLR [FCA §1024]
- Post-petition court order – The court issues an order after a hearing directing the removal of the child after the Article 10 petition has been filed [FCA §1027]

Whenever an LDSS removes a child from his or her home in an Article 10 proceeding, the Family Court must hold a hearing prior to a final order of disposition**.** With proper notification by the LDSS, the hearing may be held even in the absence of the respondents and regardless of whether the respondents file an application for the return of the child [FCA §1027]. Certain forms of hearsay testimony are allowed at removal hearings [FCA §1046]. Where a child has been removed without court order or pursuant to an order issued under FCA §1022, a hearing is usually held the next court day after the removal.

According to state law, a child may be removed from the home without the consent of the parent only when it is necessary to avoid imminent danger to the child's life or health [FCA §§1022 and 1024]. The FCA sets up a continuum of available actions on the part of CPS when removal is necessary.

When the parent does not consent, and, if there is insufficient time in the matter to apply for a court order and the matter is urgent, CPS may remove a child without a court order and subsequently request a temporary order of removal. CPS may request removal when filing an Article 10 petition or at any time during the Article 10 proceedings as necessitated by circumstances [FCA §1027].

See **Section J** of this chapter, *Rules and standards for Family Court hearings*, for an overview of how to proceed in situations where the parent consents to the removal.

Reasonable efforts to prevent removal

In 2004 the New York State Court of Appeals issued a decision in the case Nicholson, et al. v. Scopetta, et al., 3 N.Y.3d 357, 787 N.Y.S.2d 196 (2004) which discussed at length Family Court-ordered removal of children. OCFS issued a Local Commissioner's Memorandum (LCM) on the decision that can be found on the OCFS intranet website (www.ocfs.ny.gov or http://ocfs.state.nyenet) as policy directive 04-OCFS-LCM-22.

In brief, in Nicholson, the NYS Court of Appeals held that, before issuing a removal order, the Family Court must do more than identify imminent risk of serious harm. The Family Court must weigh whether the harm can be mitigated by reasonable efforts to prevent removal. Additionally, the court must determine whether removal is in the best interests of the child by balancing the risk if the child stays in the home against the harm removal might cause the child.

1. Search for placement resources

When the Family Court determines that a child must be removed from his or her home pursuant to Article 10, Part 2, or placed pursuant to FCA §1055, the Family Court shall direct the LDSS to conduct an immediate investigation to locate relatives of the child as placement resources. OCFS regulation requires that within 30 days after the removal of the child, or earlier if ordered by the court or required by SSL §384-a, the LDSS exercise due diligence to identify the child's relatives [18 NYCRR 430.11(c)(4)]. These relatives must include the following:

- Any non-respondent parent of the child[1, 2]
- Any relatives of the child, including all of the child's grandparents
- All relatives or suitable persons identified by any respondent or non-respondent parent
- Any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life
- All non-common parents of sibling(s) or half-sibling(s) where such parent has legal custody of the sibling(s) or half-sibling(s). This includes both biological and adoptive parents[3] [FCA §1017; 18 NYCRR 430.11(c)(4)]

Discussions with a parent or caretaker about close family and friends as resources should be on-going. The LDSS should regularly inquire with parents/caretakers about potential resources throughout a case, even if the child(ren) are removed from their home and placed in foster care due to imminent danger.

When speaking with identified family and/or friend resources, the LDSS should ask whether they have knowledge of other family or individuals that might be a resource to the family. Establishing a broad network of support can be instrumental in achieving positive outcomes for children and families.

The court shall also direct the LDSS Commissioner to report efforts to locate any person who is not recognized as the child's legally identified parent but who has filed with the punitive father registry, has a paternity petition pending, or has been identified as a parent by the child's other parent in a written sworn statement [FCA §1017(1)(b)]

a. *Notification of identified potential placement resources*

The LDSS Commissioner must provide written notice of the pending Family Court proceeding to all individuals identified as potential placement resources and inform them of the opportunity for:

- Non-respondent parents to seek temporary release of the child under FCA Article 10 or custody under FCA Article 6
- Relatives to seek to become foster parents, to receive direct legal custody and provide free care under FCA Article 10, or to seek custody under FCA Article 6

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[1] OCFS. (2002). "Changes to the Family Court Act Regarding Child Protective and Permanency Hearings, Including Changes Affecting the Rights of Non-Respondent Parents" (17-OCFS-ADM-02)

[2] Parent means a person who is recognized under the laws of New York State to be the child's legal parent (17-OCFS-ADM-02)

[3] OCFS. (2015). "Definition of Siblings and Expansion of the Relative Notification Requirements" (15-OCFS-ADM-01).

- Suitable persons to seek to become foster parents, to receive direct legal custody and provide free care under FCA Article 10, or to seek guardianship under FCA Article 6 [FCA §1017]

Copies of relevant notices are available on the Office of Court Administration's (OCA) website at: https://www.nycourts.gov/forms/familycourt/childprotective.shtml.

b. *Reporting and documenting the search for placement resources*

CPS must report the results of the search for placement resources to the court and all parties, including the attorney for the child [FCA §1017]. CPS also must document the results of its search in CONNX Progress Notes in the permanent case record. Documentation must include the following information about a non-respondent parent:

- Name
- Last known address
- Social Security number
- Employer's address
- Any other identifying information known to the LDSS [FCA §1017(1)(a)]

2. Temporary removal with consent

a. *Requirements for removal with consent*

A child may be temporarily removed from his or her residence with the written consent of his or her parent or PLR if the child is suspected to be an abused or neglected child [FCA §1021]. See **Chapter 14,** *Appendices*, for a model consent letter for temporary placement of children in foster care pursuant to FCA §1021.

When a parent or PLR is asked to sign a removal consent form, CPS must make reasonable efforts to inform the parent(s) about what is involved in a CPS removal and the ramifications of the parent(s) consenting to the child's removal. Reasonable efforts include, but are not limited to, providing an interpreter or other language services if the parent or PLR has Limited English Proficiency or is hearing impaired. CPS must verify that the parent or PLR has read the removal consent form and understands the contents prior to signing it.

b. *Written notice*

When conducting a removal, CPS must provide the parent or PLR with a written notice at the time of the removal that includes the following information:

1. Their right to apply to Family Court for the return of their child
2. Their right to be represented by counsel and the procedures for indigent parents and PLRs to obtain free counsel in proceedings related to the removal
3. The name, title, organization, address, and telephone number of the person removing the child
4. The name, address, and telephone number of the authorized agency to which the child will be taken, if available
5. The telephone number of the person to be contacted to arrange for visitation with the child

CPS also must provide the parent or PLR with:

1. A copy of the signed consent form
2. The telephone number of the child protective agency to contact to ascertain the date, time, and place of the filing of the petition and of the hearing that will follow [FCA §1021].

OCA Court Form 10-1A can be used for the required notice for removals. See **Chapter 14,** *Appendices.*

c. *Documentation requirement for removal with consent*

A copy of the signed consent must be attached to the abuse or neglect petition that names the removed child and it must also be made a part of the permanent court record of the proceeding. [FCA §1021]. CPS must document in the permanent case record in CONNECTIONS (CONNX) the circumstances of the removal, including specific information about the notifications provided to the child's parent or PLR.

d. *Requirement to file petition*

Unless the child is returned sooner, a petition must be filed within three court days of the removal and a hearing must be held no later than the next court day after the petition is filed [FCA §1021].

3. Removal without consent – temporary order

a. *Conditions necessary for temporary removal without consent*

The Family Court may enter an order directing the temporary removal of a child from the place where he/she is residing before an Article 10 petition is filed, if the parent or PLR is absent or, if present, was asked and refused to consent to the temporary removal of the child; removal is necessary to avoid imminent danger to the child's life or health; and there is not enough time to file an Article 10 petition and hold a preliminary hearing pursuant to FCA §1027. The parent or PLR must be given a notice (either verbally or in writing) with:

- CPS's intention to apply for an order under FCA §1022
- The date, time, and location of the court appearance, as soon as it is known
- A statement that the parent or PLR has the right to be present at the application and any hearing held concerning the application; the right to be represented by counsel; and the procedures for obtaining counsel if the parent or PLR is indigent [FCA §1023].

When a removal is necessary, but the parent or PLR is either unavailable or refuses to consent to the removal, the LDSS must file an application in Family Court for pre-petition temporary removal prior to the removal, when possible (See **Chapter 12.D,** *Notification of the removal of a child***.**) If the child's life or health is in imminent danger and there is insufficient time to file for a temporary order, emergency removal may be appropriate [FCA §1024]. If, however, the Family Court is open and there is time to draft and file an application, CPS must file for a temporary order of removal.

b. *Timeframe for court hearing*

When CPS files a request for a temporary order of removal prior to filing a petition, the court is required to calendar such an application for that day and continue the hearing on successive days until a decision is rendered [FCA §1022(a)].

c. *Court determination authorizing temporary removal*

In determining whether temporary removal is necessary to avoid imminent risk to the child, the court must also consider and determine in its order whether continuation in the child's home would be contrary to the best interest of the child and, where appropriate, whether reasonable efforts were made to prevent or eliminate the need for removal.

If the court determines that reasonable efforts to prevent or eliminate the need for removal were not made, but the lack of such efforts was appropriate under the circumstances, the court must include that finding in its order [FCA §1022(a)].

If the court determines that reasonable efforts should have been made but were not, the court must order CPS to provide or arrange for the provision of appropriate services or assistance to the child and he child's family, which may include preventive services [FCA §§1015-a and 1022(c)].

When the court determines, however, that reasonable efforts were not made, but the lack of such efforts was appropriate under the circumstances, the court must include that finding in its order. The court is also required to consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection directing the removal of a person or person(s) from the child's residence or an order to provide services [FCA §1022(a)].

Where a respondent parent or non-respondent parent is present at the removal hearing, the court advises the parent(s) of the allegations and appoints counsel for any indigent parent [FCA §§262(a) and 1022-a].

In any order directing temporary removal of a child, the court shall state its findings with respect to:

- The necessity of such removal
- Whether the respondent was present at the hearing and, if not, what notice the respondent was given
- Whether the respondent was represented by counsel and, if not, whether the respondent waived his or her right to counsel [FCA §1022(a)]

When the court determines the child will be temporarily removed, the Court must set a date certain for an initial permanency hearing [FCA §§1022(a) and 1089]

After the child has been removed, the court must issue a written order describing the location/facility where the child will be taken no later than the next court day [FCA §1022(b)].

Except when good cause is shown or unless the child is returned sooner, a petition alleging that the child is abused or neglected must be filed within 3 (three) court days of the issuance of the order directing temporary removal [FCA §1022(b)].

If the court determines after reviewing the LDSS investigation report that the child may reside with a non-respondent parent, relative, or other suitable person, the court must, at the pre-disposition stage of the Article 10 proceeding, take one of these actions:

- Grant a temporary order of custody or guardianship to such non-respondent parent, other relative or other suitable person pursuant to FCA Article 6 pending further order of the court

- Temporarily release the child directly to such non-respondent parent or temporarily place the child in the direct legal custody of a relative or other suitable person during the pendency of the proceeding or until further order of the court, whichever is earlier. The court may order the LDSS Commissioner to commence an investigation of the home of such non-respondent parent, relative, or suitable person within 24 hours and report the results to the court
- Remand or place the child with the LDSS Commissioner and direct him/her to have the child reside with such relative or other suitable person and to commence an investigation of the home of the relative or other suitable person within 24 (twenty-four) hours and approve such person, if qualified, as a foster parent [FCA §1017(2)(a)]

CPS should reference 18 NYCRR 443 concerning criteria for investigating and approving a home of a relative. If the home is found to be unsuitable, the Commissioner must report such finding to the court [FCA §1017(1)].

Where no suitable non-respondent parent or relative is located, the court must place the child in the custody of a suitable person or remand or place the child to the custody of the LDSS Commissioner. When this occurs, the court has discretion to direct that the LDSS Commissioner have the child reside with a specific certified foster home when the court determines that such placement is in the furtherance of the child's best interests [FCA §1017(2)(b)].

d. *Executing the removal*

When CPS removes the child in the execution of a temporary order of removal, he/she must provide the parent or PLR with the following information, in writing:

- The name, title, organization, address and telephone number of the person removing the child
- The name, address and telephone number of the child care agency to which the child will be taken
- The telephone number of the person to be contacted for visits with the child, if available
- Notice of the right to apply to the Family Court for return of the child under FCA §1028 [FCA §1022(d)]

If the child is removed and the parent or PLR is absent, the law requires that the notice be affixed to the door of the residence and a copy mailed to such person at his or her last known place of residence within 24 (twenty-four) hours [FCA §1022(d)]. Affixing the notice to the inside of the door is preferable to protect confidentiality. When this is not possible, the notice should be placed in a sealed envelope marked with the parent(s) name and affixed outside the door. (See **Chapter 12.D,** *Notification of the removal of a child.)*

The relevant OCA forms must be included, and are located on the OCA website at: https://www.nycourts.gov/forms/familycourt/childprotective.shtml

4. Emergency removal without court order or parental consent

a. *When emergency removal is permitted*

A peace officer acting pursuant to his or her special duties, police officer, law enforcement official, or designated LDSS employee must take all necessary measures to protect a child's

life or health including, when appropriate, taking or keeping a child in protective custody [FCA §1024(a)].

A designated LDSS employee may take protective custody of a child without a court order and without the consent of the child's parent or PLR, even when the parent or PLR is absent, if a designated LDSS employee has reasonable cause to believe that a child's continued residence in his or her home and/or in the care and custody of the parent or PLR presents an imminent danger to the child's life or health, and there is not time enough to apply to the court for a temporary order for removal.

An emergency removal should be used only when:

- A child is in imminent danger and the court is not open (e.g., on an evening, weekend, or holiday) **or**
- The court is open but it is too late in the day to prepare and file an application with the court **and**
- Circumstances require immediate action to safeguard the child

b. *Required procedures for an emergency removal*

When CPS conducts an emergency removal of a child, it must:

- Immediately bring the child to the relevant LDSS-approved agency (e.g., a Child Advocacy Center)
- Make every reasonable effort to notify the parent or PLR of the facility to which CPS has brought the child
- Provide written notice to the parent or PLR, which must include the following information:
  - The right of the parent or PLR to apply to the Family Court for the return of the child pursuant to FCA §1028
  - The right to be represented by counsel and procedures for an indigent parent or PLR to obtain counsel
  - The name, title, organization, address and telephone number of the person removing the child
  - The name, address, and telephone number of the authorized agency to which the child will be taken
  - If available, the telephone number of the person to be contacted for visitation with the child
  - Information relevant to the impending request by CPS for an order of temporary removal under FCA §1022, including CPS's intention to apply for the order, the date and the time the application will be made, the address of the court where the application will be made, the right of the parent or PLR to be present when the application is submitted, and the right of the parent to obtain counsel (or procedures for an indigent parent to obtain counsel) at any subsequent hearing [FCA §1024(b)].

c. *Method of serving the notice*

The notices described above must be personally served upon the parent or PLR at the child's residence. If, however, the parent or PLR is not present at the child`s residence at the time of removal, a copy of the notice must be affixed to the door of such residence *and* a copy must be mailed to such person at his or her last known place of residence within 24 hours after the removal of the child.

If the place of removal is not the child's residence, a copy of the notice shall be personally served upon the parent or PLR without delay, or affixed to the door of the child's residence and mailed to the parent or PLR for the child's care at his or her last known place of residence within 24 hours after the removal [FCA §1024(b)].

When mailing the notice, CPS may send it either by regular or certified return receipt mail. CPS should note in the records when the notice is mailed, and in the case of the case of return receipt mail, when the receipt is received.

An affidavit of the service of the notice must be filed with the clerk of the court within 24 hours of serving the notice, exclusive of weekends and holidays [FCA §1024(b)].

When an emergency removal has been effectuated, CPS must inform the court and make a report to the SCR as soon as possible [FCA §1024(b)(iv)].

In every case where a child has been subject to an emergency removal without court order, CPS must make every reasonable effort to immediately communicate with the parents. If CPS determines that the case does not involve abuse and there is no imminent risk to the child's health, the child should be returned without delay [FCA §1026].

If, however, CPS determines this is a matter of abuse of a child, only the court may determine that the child may be returned after removal. Where appropriate, CPS may make a recommendation to the court that the child be returned or that no petition be filed [FCA §1026(a)].

When CPS returns the child to the parent or PLR and there is a plan to file a neglect petition, CPS may, but is not required to, condition the return upon the parent or PLR to write a promise that he/she will appear in Family Court when petitioned to do so. CPS may also require him/her to bring the child to court [FCA §1026(b)].

If the child is not returned, the LDSS must file a petition no later than the next court day after the child was removed. The court may order an extension for a petition of emergency removal (only upon good cause shown), of up to three court days from the date of the child's removal. A hearing must be held no later than the next court date after the petition is filed and findings must be made by the court [FCA §1026(c)].

G. Hearings after filing a petition for removal of a child

A hearing is required after a petition is filed in any case in which a child was temporarily removed under one of the following circumstances:

- The child was removed without a court order
- A hearing was held in accordance with FCA §1022 (i.e., before a petition was filed) and the parent was not present
- Such a hearing was held and the parent was present but was not represented by counsel and did not waive the right to counsel

The Family Court must hold a hearing no later than the next court day after the filing of a petition to determine whether the child's interests require protection. At the hearing, the court must consider whether the child should be returned to the parent or PLR, pending a final order of disposition. The hearing must continue on successive days until a decision is made by the court.

When a child has been removed and the court has not ordered a final disposition, the person who initiated the petition (e.g., CPS or attorney for the child) may apply for a hearing at any time to determine whether the child's interests require protection, including whether the child should be returned to the parent or PLR and as to the necessity of an order of protection. The court may also order such a hearing at any time before disposition. In any case, a hearing must be scheduled for no later than the next court day after the application for the hearing has been filed or ordered [FCA §1027(a)].

1. Preliminary orders issued by the court at the hearing

a. *Removals*

In determining whether ordering a removal of a child or continuing the removal is necessary to avoid imminent risk to the child`s life or health, the court must consider and state in its order:

- Whether continuation in the home or returning the child to his or her home would be contrary to the best interests of the child, **and**
- Where appropriate, whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the home, **or**
- Where appropriate, that reasonable efforts were made to make it possible for the child to safely return home.

If the court finds that reasonable efforts were not made to prevent or eliminate the need for removal but the lack of such efforts was appropriate under the circumstances, the court must address this finding in its order.

If the court finds that reasonable efforts to prevent or eliminate the need for removal were not made but that such efforts were appropriate under the circumstances, the court must order the child protective services to provide or arrange for the provision of appropriate services and assistance to the child and the child's family.

The court must also consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection that directs the removal of the perpetrator(s) from the child's residence [FCA §1027(b)].

b. *Search for placement resources*

If the judge determines a removal is necessary to avoid imminent risk to the child`s life or health, the court must remove or continue the removal of the child. The court will immediately inquire as to the status of efforts made by the LDSS to locate relatives of the child, including any non-respondent parent and all of the child's grandparents [FCA §1027(b)].

For all categories of foster care, within 30 days of removal, the LDSS must exercise due diligence in identifying all of the child's grandparents, all parents of a sibling of the child where such parent has legal custody of the sibling and all other adult relatives, including adult relatives suggested by the child parent or parents, with the exception of grandparents, parents of a sibling of the child where the parent has legal custody of the sibling and/or other identified relatives with a history of family or domestic violence.

The LDSS must provide such persons with notification that the child has been or is being removed from the child's parents, which explains the options under which such persons may provide care either as a foster parent or direct legal custody or guardianship, and any options that may be lost by the failure to respond to such notification in a timely manner [18 NYCRR 430.11(c)(4)].

The court must also inquire as to whether the child, if over the age of five, has identified any relatives who play or have played a significant positive role in his or her life and whether any respondent or non-respondent parent has identified any suitable relatives. The inquiry will include whether any relative who has been located has expressed an interest in becoming a foster parent or otherwise for the child or in seeking custody or care of the child [FCA §1017(1)].

c. *Placement or remand*

Upon completion of the placement resources inquiry, the court may place or remand the child with one of the following a non-respondent parent, relative, or suitable person (including the custodial parent of a sibling or half-sibling).

The LDSS must begin an investigation of the home of the relative or other suitable person seeking custody or care of the child within 24 hours. If a relative or other suitable person has expressed an interest in becoming a foster parent for the child the LDSS must expedite the certification or approval of the relative or suitable person. If the home is found to be unsuitable, the LDSS must report that information to the court and other parties to the proceeding, including the attorney for the child, as soon as possible.

When the child is placed with the LDSS, the court may direct the LDSS to have the child reside with a specified relative or suitable person. If the court does so, it must also direct the LDSS to begin an investigation of the home of the relative or suitable person within 24 hours. If the home is found to be unsuitable, the LDSS must report that information to the court and other parties to the proceeding, including the attorney for the child, as soon as possible [FCA §1017(2)(a)].

Contents of court order for removal or continuance of removal

The court order for removal must include the following:

- The court's findings explaining the necessity of the removal or continuing the removal; and whether the respondent was present at the hearing

- If the respondent was not present, what notice of the hearing was provided to respondent
- If the child was removed pre-petition, whether such removal was conducted pursuant to FCA §1021 (removal with consent), FCA §1022 (temporary removal with court order) or FCA §1024 (emergency removal) [FCA §1027(b)]

If the court determines after the hearing that the child should be removed, the court will set a date for an initial permanency hearing. The court order must include the date for the initial permanency hearing and a copy of the order must be provided to the parent or PLR [FCA §1027(h)].

2. Other orders

a. *Medical procedures*

The court may authorize a physician or hospital to provide medical or surgical procedures when the procedures are necessary to safeguard the child's life or health [FCA §1027(e)].

In all cases alleging abuse; the court ***must*** order an examination of the child by a physician. When the order alleges neglect; the court ***may*** order a medical examination. The examining physician must arrange to have color photographs taken of visible trauma, as soon as practical. The physician may, if indicated, also arrange for radiological tests on the areas of visible trauma. Unless color photographs have already been taken or there are no areas of visible trauma, the court must arrange that color photos be taken even if it does not order a physical exam [FCA §1027(g)].

Order of Protection (OOP)

The court may issue a preliminary order of protection that may contain any of the provisions authorized under FCA §1056 [FCA §1027(c)].

b. *Visitation by respondent after removal*

Any respondent in an Article 10 proceeding must be granted reasonable visitation with the child placed in temporary custody of the LDSS (i.e., a child in foster care) unless it is determined by the court that such visitation would endanger the life or health of the child. The court may order the LDSS to supervise the visitation. If the LDSS challenges the respondent's right to visitation, the respondent may appeal to the court for an order granting visitation at stated intervals [FCA §1030]

Removal after a petition has been filed

The LDSS may remove a child at any point after a petition has been filed. However, the LDSS must notify the child's parents or PLR of the same information as required for removal and proceed in accordance with FCA §1021 (temporary removal with consent); FCA §1024 (emergency removal without consent); or FCA §1027 (removal with court order).

H. Summonses and required notifications

On the same day the petition is filed and the child has been removed, unless a warrant was issued in accordance with FCA §1037, the court must issue a summons and provide copies of the petition to the parent or PLR. The front page of the summons must clearly state "Child Abuse Case," as applicable, and must require the parent, PLR, or person with whom the child had been residing to appear in court for a hearing within three court days to answer the petition (unless a shorter period of time is ordered) [FCA §1035(a)].

When a petition is filed and the child has *not* been removed from his or her home, the court shall forthwith cause a copy of the petition and the summons to be served, clearly marked on the face thereof "Child Abuse Case," as applicable, requiring the person served to appear in court for a hearing within seven court days [FCA §1035(c)].

Where there will be a proceeding to determine abuse or neglect, the summons must contain a statement in conspicuous print informing the respondent that:

- The proceeding may lead to the filing of a petition for the termination of the respondent's parental rights and commitment of guardianship and custody for the purpose of adoption, and
- If the child is placed and remains in foster care for 15 of the most recent 22 months, the agency may be required by law to file a petition for termination of respondent's parental rights and commitment of guardianship and custody of the child for the purpose of adoption [FCA §1035(b)].

The summons and petition must be served on both parents of the child, regardless of whether one, both, or neither of the parents is named as a respondent [FCA §1035(d)].

1. Notice of pendency of a child protective proceeding

Where the respondent is not the child's parent, the summons and the petition must also be accompanied by a notice of the pendency of the Article 10 proceeding. This notice must inform each parent of his or her right to appear and participate in the hearing as an interested party intervenor for the purpose of seeking temporary and permanent custody of the child, and to participate in all arguments and hearings insofar as they affect the temporary release or custody of the child during fact-finding proceedings and in all phases of dispositional proceedings. The notice must also advise the parent(s) of their right to counsel, including assigned counsel [FCA §1035(d)]. The OCA has notices on its website that include all the required notifications: https://www.nycourts.gov/forms/familycourt/childprotective.shtml

CPS should, when practical, speak with the parent(s) before filing a child abuse or neglect petition to advise them of their decision to file, unless it has been determined the parent(s) are a potential flight risk.

If a petition alleges abuse, the Family Court may also require production of the child at a specific time and place [FCA §1035(c)].

The court is permitted to authorize the service of a summons to non-New York State residents or non-domiciled respondents when the allegedly abused or neglected child resides or is domiciled within New York State and the alleged abuse or neglect occurred within New York State [FCA §1036(c)].

2. Notice of removal for a non-custodial parent

The summons, petition, and notice of pendency of a child protective proceeding served on the child's non-custodial parent must include notification that the child was removed from his or her home, if applicable. The notice must:

- Provide the name and address of the official to whom temporary custody of the child has been transferred
- Provide the name and address of the agency with whom the child has been temporarily placed, if different, and
- Advise the non-custodial parent of their right to request temporary and permanent custody and to seek enforcement of their visitation rights

The court must provide non-respondent parents with a notice of pendency of child protective proceedings that advises the parents of their right to intervene. This notice must accompany the summons and petition served on all non-respondent parents [FCA §1035(e)].

3. Intervention by other interested people

If the parent consents, a child's adult sibling, grandparent, aunt, or uncle not named as a respondent in the petition may intervene in the proceeding as an “interested party intervenor” for seeking temporary or permanent custody of the child.

Parental consent is not required, however, if the parent does not appear in court. When this occurs, the interested relatives must obtain the Family Court’s permission to intervene. The court may permit the interested relatives to participate in all subsequent hearings concerning the temporary and/or permanent placement of the child. The law advises the Family Court to liberally grant motions by interested relatives for intervenor status.

The intervenor, (i.e., a non-respondent parent or relative granted permission to intervene) has the right to participate at the fact-finding hearing and other hearings that may affect the temporary custody of the child. Intervenors may also participate in all phases of the dispositional hearing [FCA §1035(f)].

Although the court has the authority to issue and serve summonses, conduct hearings and grant intervenor status, CPS caseworkers do have a role in these decisions, particularly with regard to intervention and its possible effect on the plan for the child. Because the law advises the court to liberally grant motions for intervenor status, CPS must obtain as much information as possible related to the willingness and capability of non-respondent parents and other relatives to provide temporary and/or permanent care for the removed child.

CPS is obligated to make reasonable efforts to prevent placement [18 NYCRR 430.10(b)]. At the dispositional hearing, the Family Court is required to determine that such efforts have been made before approving a foster care placement. Briefly, the regulations require the LDSS to:

1. Provide preventive services to the family and child, unless the offer of services has been refused
2. Attempt to locate adequate living arrangements with a relative or family friend that would enable the child to avoid foster care placement
3. Document in the case record that preventive services have been offered and the reasons why preventive services were not able to prevent placement

4. Attempt to place a child of a minor parent in foster care in the same foster home or residential facility as the minor parent in foster care without the LDSS assuming care and custody of the child
5. Where applicable, document in the case record that it was not possible to place such a child with the minor parent who is in foster care

The court may also ask the LDSS for information and recommendations concerning the child and the family and about suitable placement options.

After the fact-finding hearing, the court on its own authority or upon a motion of the respondent, the petitioner, or the attorney for the child may order a reasonable adjournment of the proceedings to allow time to enable the court to make inquiry into the surroundings, conditions and capacities of the persons involved in the proceedings [FCA §1048(b)].

I. Adjournment in contemplation of dismissal (ACD)

1. Provisions for adjournment in contemplation of dismissal (ACD)

An ACD is an adjournment of a proceeding for up to 1 (one) year with the consent of the petitioner, respondent and attorney for the child, which may lead to a dismissal of the petition [FCA §1039(a)]. Upon the consent of the petitioner, the respondent(s) and the attorney for the child, the court may issue an order extending the period of the ACD for such time and upon such conditions as may be agreeable to the parties to the proceeding [FCA §1039(b)].

An ACD order may describe the terms and conditions agreeable to the parties and the court. However, every ACD order must include the requirement that the child and the respondent(s) be under CPS supervision during the adjournment period [FCA §1039(c)]. If CPS is not the primary service provider, CPS must monitor the provision of any rehabilitative services provided to the family [18 NYCRR 432.2(b)(4&5)].

An ACD order will direct CPS to submit a progress report to the court, the relevant parties, and the attorney for the child within 90 (ninety) from the issuance of the order, unless the court states the report is not required. The court may also direct CPS to submit additional reports to the court, the relevant parties, and the attorney for the child [FCA §1039(c)].

The LDSS may make a motion before the court requesting that an ACD be issued prior to or upon the fact-finding hearing. An ACD or the extension of an ACD may be granted only with the consent of the LDSS, the respondent(s), and the attorney for the child. If any of the parties do not consent to the ACD, the court may not order an ACD. The court may not order a party to consent to an ACD [FCA §1039(a)].

The court may grant an ACD only after it has informed the respondent as to the legal provisions related to ACDs and it is satisfied the respondent understands the applicable law [FCA §1039(a)].

> ***When to consent to an ACD***
>
> Because an ACD will usually result in a dismissal of the case, it is not advisable for an LDSS to consent to an ACD when the case is serious enough to require placement of the child(ren). CPS should consent to an ACD only when the dismissal of the petition would be in the furtherance of justice and would not endanger the child. An ACD cannot serve as a placement order.

At any time during the duration of an ACD order, upon application of the respondent, petitioner, attorney for the child, or upon the court's own motion, if CPS has failed substantially to provide the respondent with adequate supervision or to observe the terms and conditions of the order, the Family Court may direct CPS to provide the respondent with adequate supervision or to observe the terms and condition required by the order [FCA §1039(d)].

During the ACD period, based on its own motion or on the application of the petitioner or attorney for the child, the court may restore the matter to the calendar if it finds after a hearing that the respondent has failed substantially to observe the terms and conditions of the order or to cooperate with CPS. In such event, unless the parties consent to an order sustaining or dismissing the petition pursuant to FCA §1051, or unless the petition is dismissed upon the consent of the petitioner, the court shall proceed to a fact-finding hearing within 60 (sixty) days of such application unless the period is extended by the court [FCA §1039(e)].

Upon the expiration of the ACD, the petition will be dismissed in furtherance of justice, unless the case has been restored to the court's calendar due to the respondent's failure to comply with the terms and conditions of the ACD [FCA §1039(f)].

2. Factors determining CPS's consent to an ACD

As stated above, when an LDSS is the petitioner in an Article 10 proceeding, the Family Court may not grant an ACD unless the LDSS (and other parties) consent.

OCFS regulations require that the LDSS consider several factors to determine if the LDSS should consent to an ACD. These factors include, but are not limited to:

1. Whether the terms of the order will include requirements that the child's parent(s) or guardian(s) avail themselves of rehabilitative services and/or refrain from the types of conduct which caused the alleged abusive or neglectful behavior that necessitated the filing of the child protective petition
2. Whether the evidence which CPS could introduce to prove that the respondent(s) abused or neglected a child will be available at a subsequent fact-finding hearing which would be held if the conditions of the ACD order were violated
3. The seriousness of the alleged incidents of child abuse or neglect;
4. The likelihood that the child will be abused or neglected after the issuance of an ACD order;
5. The amount of cooperation which the respondent(s) is/are willing to provide to CPS to help alleviate the circumstances which resulted in the alleged abuse or neglect of the child; and,
6. Whether the terms of the ACD order can be made sufficiently clear so that compliance with its provisions may be adequately monitored by CPS [18 NYCRR 432.11(b)].

The same six factors should be used by CPS to determine whether to submit its own motion for an ACD.

3. CPS requirements for ACDs

When all parties consent and the Family Court grants an ACD, the LDSS will be required to supervise the child and the respondent(s) during the entire ACD period. Within 90 days of the issuance of the ACD, the LDSS is required to report to the court, respondents and attorney for the child, unless the court determines that a report is not required [FCA §1039(c)].

If the respondent substantially fails to comply with any terms of the ACD, the LDSS should request that the original petition be restored to the court calendar [FCA §1039(e)]. If it does, the motion filed by the LDSS must describe how the ACD terms were violated.

The court must conduct a fact-finding hearing no later than 60 days after the request to restore the petition to the court's calendar is granted, (unless there is an adjudication by consent or the petition is dismissed). The court may extend the 60-day time limit for good cause [FCA §1039(e)].

A violation of an ACD order will not result in an automatic finding of abuse or neglect and/or an immediate dispositional hearing. The judge must conduct or continue the fact-finding hearing that was adjourned by the ACD order. The court may not enter an adjudication of abuse or neglect unless a fact-finding hearing has been held, and has resulted in a finding of abuse or neglect.[4]

At the fact-finding hearing, CPS must provide a fair preponderance of evidence that the respondent abused or neglected the child [FCA §1046(b)]. Non-compliance with an ACD on its

[4] Matter of Marie B., 62 NY 2d 352, 477 NYS2d 87

own is not sufficient for a finding of abuse or neglect. However, CPS may file another petition alleging any additional actual facts concerning parental abuse or neglect that could support a judicial finding of abuse or neglect.

CPS must notify the attorney for the child if the respondent is the named subject (or other person named) in an indicated report of child abuse or maltreatment at any time during the term of the ACD [FCA §1039-a].

Sixty days before the expiration of an ACD, CPS must submit a report to the court and the attorney for the child [FCA §1058].

J. Rules and standards for Family Court hearings

1. Rules and standards of evidence

The following rules and standards apply to evidence presented in **any** hearing conducted under Article 10 or Article 10-A of the Family Court Act [FCA §1046]:

> ***Types of hearings***
>
> A "fact-finding hearing" is a hearing in Family Court to determine whether a child is an abused or neglected child as defined in the FCA.
>
> A "dispositional hearing" is a hearing to determine what order of disposition should be made.

1. Proof of the abuse or neglect of one child is admissible evidence on the issue of the abuse or neglect of any other child of the respondent or on the legal responsibility of the respondent.
2. Proof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omission of the parent or other person legally responsible for the care of such child shall be prima facie evidence of child abuse or neglect, as the case may be, of the parent or other person legally responsible.
3. Proof that a person repeatedly misuses drugs or alcoholic beverages, to the extent that it has the effect of producing in the user a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, is prima facie evidence that a child of such person is a neglected child, except if that person is voluntarily and regularly participating in a recognized rehabilitative program.
4. Any writing, record, or photograph made concerning a child in an abuse or neglect proceeding made by any hospital or other public or private agency is admissible as evidence, if the judge finds that it was made in the regular course of business of the hospital or other agency; that it was part of the regular business of the hospital or agency to make such a writing, record or photograph; and that it was made at the time of the act or event recorded or within a reasonable time thereafter. A certification by the head of the hospital or agency, or that person's designee, that it is the full and complete record; that it was made in the regular course of business; and that it was the regular course of business of the hospital or agency to make such a record will be prima facie evidence of the facts contained in the certification. Other circumstances of the making of the record or photograph, including lack of personal knowledge of the maker, may affect the weight given to the evidence, but not its admissibility.
5. Any report made to the SCR by a mandated reporter is admissible evidence.
6. Previous statements made by the child relating to any of the allegations of abuse or neglect are admissible but, if they are uncorroborated, the statements are not sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the statements, including, but not limited to, the types of evidence described in this list, are sufficient corroboration. The testimony of the child is not necessary to make a fact-finding of abuse or neglect.
7. Evidence that is otherwise admissible may not be excluded based on the privilege attaching to confidential communications between husband and wife, physician and patient, psychologist and client, social worker and client, or rape crisis counselor and client.

8. Proof of the "impairment of emotional health" or "impairment of mental or emotional condition" as a result of the unwillingness or inability of the respondent to exercise a minimum degree of care toward a child may include competent opinion or expert testimony and may include proof that such impairment lessened during a period when the child was in the care, custody or supervision of a person or agency other than the respondent.

The following rules and standards apply in a fact-finding hearing in a Family Court:

1. A determination that a child is an abused or neglected child must be based on a **preponderance of evidence.** ("Preponderance of the evidence" means that it is more likely than not that the child was abused or neglected.)
2. Whenever a determination of severe or repeated abuse is based on clear and convincing evidence, the fact-finding order must state that the determination is based on clear and convincing evidence.
3. Only competent, material, and relevant evidence may be admitted, except as otherwise provided in Article 10. ("Competent" evidence is evidence that is admissible in court. As used here, it means evidence must be admissible under the general rules of evidence, except as provided for in the list above. "Material" evidence is evidence that helps to prove or disprove a matter in issue. "Relevant" evidence is evidence that makes the existence of a matter in issue more or less probable.)

Only material and relevant evidence may be admitted in dispositional hearings and all other proceedings under Article 10, except fact-finding hearings, and in permanency hearings and all other proceedings under Article 10-A. The statute does not require that evidence in dispositional hearings and permanency hearings be "competent," which means it does not necessarily have to be admissible under the general rules of evidence.

2. Sequence of hearings

Upon completion of the fact-finding hearing, the dispositional hearing may begin immediately after the required findings are made [FCA §1047(a)].

Reports prepared by a probation service or a duly authorized entity for use by the court for the making of a disposition are confidential. The court must make them available to all counsel for inspection and copying. The court may, in its discretion, withhold from disclosure a part or parts of the information that is not relevant to a proper disposition, or are obtained on a promise of confidentiality, or where disclosure would not be in the interests of justice or in the best interests of the child. When the court does this, it must state in the record that parts of the report have not been disclosed and state the reasons for that action. Such action by the Court is subject to review on appeal from the order of disposition. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing [FCA §1047(b)].

3. Sustaining or dismissing a petition

After the fact-finding hearing, the court may:

- Enter a finding that a child is an abused or neglected child and state the grounds for the finding, if there are facts established sufficient to sustain the petition or if all parties and the attorney for the child consent.

- Amend the allegations if the proof presented does not conform to the specific allegations in the petition. The court may amend the allegations to conform to the proof, provided that the respondent is given sufficient time to answer the amended allegations.
- Dismiss the petition and state on the record the grounds for dismissal if facts are not established sufficient to sustain the petition or, in a case of alleged neglect, the court concludes that its aid is not required [FCA §1051(a)-(c)].

If a court makes a finding of abuse or neglect, it must decide, based on the facts before it, whether a preliminary order pursuant to FCA §1027 is required to protect the child's interests pending a final order of disposition. The court must state the grounds for its determination. Also, if a child is found to be abused or neglected and the court finds that the final order of disposition is likely to be an order of placement under FCA §1055, the child may be removed and placed in foster care by the LDSS or placed in the custody of a suitable person by the court, pending an order of final disposition [FCA §1051(d)].

If a court makes a finding of abuse, it must cite the specific paragraph(s) of the law that defines an abused child that has or have been established. If the court finds that the child has been sexually abused, it must specify the specific sex offense as defined in the Penal Law, and also may enter a finding of severe abuse or repeated abuse as defined in SSL §384-b. This finding is admissible in a proceeding to terminate parental rights. If the court makes a finding of severe or repeated abuse, it must state the grounds for its determination, which must be based upon clear and convincing evidence [FCA §1051(e)].

Before accepting an admission to an allegation or permitting a respondent to consent to a finding of neglect or abuse, the court must inform the respondent that such an admission or consent will result in the court making a fact-finding order of abuse or neglect, and must also inform the respondent of the potential consequences of such an order, including but not limited to the following:

1. The court will be able to make an order of disposition, which may include placing the child(ren) in foster care
2. The placement of children in foster care may, if the parent fails to maintain contact with or plan for the future of the child, lead to proceedings for the termination of parental rights and to the possibility of adoption of the child; and
3. The report made to the SCR upon which the petition is based will remain on file for ten years after the 18th birthday of the youngest child, the respondent will be unable to obtain expungement of the report, and the existence of the report may be made known to employers seeking to screen employee applicants and to child care agencies if the respondent applies to become a foster parent or adoptive parent.

If the court fails to give such notice prior to an admission or consent, the admission or consent will be vacated upon motion of any party [FCA §1051(f)].

4. Disposition on adjudication

After a dispositional hearing, the Family Court must issue an order of disposition and explain the grounds for the particular disposition [FCA §1052(a) and (b)]. The Family Court may:

- Issue a suspended judgment [FCA §1053] (See **Section L** of this chapter**,** *Expiration of orders*.)

- Release the child to a non-respondent parent or parents, or to a legal custodian(s) or guardian(s) who is not a respondent in the proceeding [FCA §1054] (See **Section L,** *Expiration of orders.)*
- Place the child in the custody of a relative, a suitable person, the LDSS Commissioner, or a duly authorized agency, as permitted by FCA §1055
- Grant custody of the child to a respondent parent or parents, a relative, or a suitable person pursuant to FCA Article 6 [FCA §1055-b]
- Issue an order of protection [FCA §1056]
- Release the child to the respondent(s) and, at the court's discretion, place the respondent(s) under the supervision of CPS, the LDSS or a duly authorized agency [FCA §1057]
- Grant custody of the child to a non-respondent parent or parents [FCA Article 6]

When the dispositional order releases the child to a respondent, non-respondent parent, legal custodian, or guardian, and the order was issued on the consent of the parties and the attorney for the child, CPS must submit reports within 90 days after the order of disposition was issued and no later than 60 days prior to the expiration of the order. However, the court may determine that such reports are not required [FCA §§1054(d) and 1057(c)].

When the dispositional order includes a suspended judgment; the court may order CPS to submit progress reports on the implementation of the order. Where the order of disposition was issued upon the consent of the parties and the attorney for the child, the report must be submitted within 90 days after the order is issued, unless the court determines the report is not required [FCA §1053(c)].

K. Disposition on adjudication

1. Suspended judgment

A suspended judgment is a dispositional order that sets conditions for a specific period of time during which the respondent has an opportunity to make corrective action that may result in the case being dismissed.

The terms and conditions of a suspended judgment must relate directly to the act or omissions of the parent or PLR. The maximum duration of a suspended judgment is one year, unless the court determines that exceptional circumstances require an extension for one additional year [FCA §1053]. The LDSS has the option to file a violation petition if the LDSS determines a parent or PLR has violated the terms and conditions of the suspended judgment order [FCA §1071].

If the child is in foster care, the suspended judgement order must set forth the visitation plan between the respondent and the child and between the child and his or her siblings, and require the authorized agency to notify the respondent of case conferences [22 NYCRR 205.83(a)].

A suspended judgment order must contain at least one of the following terms and conditions that relate to the adjudicated acts or omissions of the respondent, directing the respondent to:

1. Refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused neglect or abuse
2. Provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child
3. Provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child
4. Take proper steps to ensure the child's regular attendance at school
5. Cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit CPS to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling [22 NYCRR 205.83(a)].

It may be helpful for the suspended judgment order to contain other terms or conditions that are relevant to the respondent's or child's circumstances, such as requiring the respondent to

- Attend parenting classes and demonstrate the ability to use the skills from such classes with the child
- Cooperate in obtaining mental health services for the child, participate in the child's therapy as requested by the child's therapist, and demonstrate an understanding of the child's mental health needs

2. Release to a non-respondent parent, legal custodian, or guardian

A dispositional order may release a child for up to one year to a non-respondent parent or to a person who was the child's legal custodian or guardian when the petition was filed and who is not a respondent in the Article 10 proceeding. Such dispositional order may be extended for up to one year for good cause [FCA §1054(a)].

The person to whom the child is released may be required to submit to the jurisdiction of the court for the period of placement and/or extension. The order may include, but is not limited to, a direction for the person(s) to cooperate in making the child available for:

- Court-ordered visitation with respondents, siblings, and/or other people
- Appointments with and visits by CPS, including visits in their home and in-person contact with CPS caseworkers, social service officials or a duly authorized agency
- Appointments with the attorney for the child, clinician or other individual or program that provides services to the child [FCA §1054(b)]

The dispositional order must describe the terms and conditions applicable to the non-respondent parent, CPS, LDSS, and any duly authorized agency. The court also may issue either of the following orders:

- An order directing that services be provided to the respondent parent [FCA §1015-a]
- An order of protection in conjunction with an order releasing a child to a non-respondent parent, legal custodian or guardian [FCA §1056(1)]

An order of disposition that releases the child to the non-respondent parent, custodian, or guardian may require CPS to submit progress reports to the court, relevant parties, and attorney for the child. When the order of disposition is issued upon consent of the relevant parties and the attorney for the child, CPS must report to the court, the parties, and the attorney for the child no later than 90 days after the order is issued and no later than 60 days after the expiration of the order, unless the court determines progress reports are not required based on the facts and circumstances of the case [FCA §1054(d)].

3. Placement in foster care

The court may issue an order of disposition to place a child in the custody of:

- A relative or other suitable person, or
- The local Commissioner of Social Services.

If the court finds a child to be a sexually exploited child as defined in SSL §447-a, the court may place the child in the custody of the LDSS Commissioner for placement in a long-term safe house.

The court may also place the child in the custody of the LDSS Commissioner and direct the Commissioner to place the child with a relative or other suitable person who has indicated a desire to become a foster parent for the child [FCA §1055(a)].

If the Family Court places a child, the court must state that continuation in the child's home would be contrary to the best interests of the child, and, where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing to prevent or eliminate the need for removal of the child from his or her home.

If the child was removed from the home prior to the date of the dispositional hearing, the court must state that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to safely return home [FCA §1052(b)(i)].

Reasonable efforts to prevent or eliminate the need for removal or to make it possible or the child to return home safely *are not required* if the court determines that aggravated circumstances, as defined in FCA §1012(j), exist; or if the parent has been convicted of specified counts of murder or manslaughter of his or her child, has been convicted of other specified crimes where the victim

was a child or if the parental rights of the parent to a sibling of such child have been involuntarily terminated [FCA §§1039-b and 1052(b)].

If the court finds that the LDSS has not made reasonable efforts to prevent or eliminate the need for placement, and that such efforts would be appropriate, the court shall direct that the LDSS to provide or to arrange for the provision of services or assistance for the child and family, pursuant to FCA §1015-a [FCA §1052(b)]. The court may require an LDSS official to make periodic progress reports to the court on the implementation of such an order [FCA §1015-a]. When the court orders the LDSS to provide services for this reason, the court may adjourn the hearing for a reasonable period of time if the court determines that additional time is necessary and appropriate for the LDSS to make such efforts [FCA §1052(b)].

a. *Permanency hearings*

If the court orders the placement of the child in the care and custody of the LDSS Commissioner, the placement will continue until the court completes the initial permanency hearing. The date certain for the initial permanency hearing will be specified in the placement order, and must begin no later than eight months from the date the child was removed [FCA §1055(b)].

If the child's sibling or half-sibling was previously removed and has a permanency hearing date certain scheduled within eight months, the permanency hearing date certain for each will be the sibling's or half-sibling's, unless the sibling was placed in accordance with FCA Article 3 or 7 [FCA §1055(b)].

The Family Court has continuing jurisdiction over the parties in cases where a child is placed under Article 10 until the child is discharged from placement by the court or all orders regarding supervision, protection or services have expired. Foster care placement continues until further orders of the court [FCA §1088]. Permanency hearings must be completed within 30 days of the date certain set for those hearings [FCA §1089(a)].

b. *Notice of permanency hearings*

No later than 14 days before a scheduled permanency hearing, the LDSS must serve a notice of the permanency hearing and the permanency hearing report (PHR) via regular mail to the following:

- The child's parent and any non-respondent parent (unless their parental rights have been terminated or surrendered) and any PLR, at the most recent address or addresses known by the LDSS
- The child's current foster parent
- The agency supervising the care of the child on behalf of the LDSS (where applicable)
- The attorney for the respondent parent
- The attorney for the child
- Any pre-adoptive parent or other relative caring for the child

The notice only (minus the Permanency Hearing Report) must be provided to the child if age 10 or older. Notice also must be sent to any former foster parent with whom the child resided continuously for at least 12 months, unless the court dispenses with the notification to the former foster parent on the basis that it is not in the child's best interests.

The foster parent currently caring for the child pre-adoptive parents and other relatives have the right to be heard in court, but are not parties to the proceedings solely on the basis of receiving notice and having the right to be heard [FCA §1089(b)].

c. *Permanency Hearing Report (PHR)*

The PHR is a sworn document that must include, but is not limited to, up-to-date and accurate information related to:

1. The child's permanency goal
2. The health, well-being, and status of the child since the last permanency hearing, including:
   - A description of the child's health and well-being
   - Information about the child's current placement
   - Information about the child's educational progress
   - Description of visitation plan(s)
   - Description of services and assistance provided to a child age 14 or older, related to learning independent living skills
   - Description of any other services provided to the child
3. The current status of the parent, including his or her progress
4. Reasonable efforts made by the LDSS or other agency since the last hearing to effectuate the permanency plan, including any concurrent planning for an alternative permanency plan for a child who is not likely to return home
5. The recommended permanency plan, including any changes in the current plan

An evaluation of the child's safety should be a significant factor in the LDSS's decision to recommend to the court either that the child return home, remain in care, or have another

Creating the PHR

The PHR is generated in CONNECTIONS (CONNX) from the Permanency window. There are three types of PHRs available in the system:

- Individual child (PH-1)
- Multiple children in the same case who are not completely legally freed (PH-2)
- Individual child who is completely legally freed for adoption (PH-3)

No address information for any of the participants in a permanency hearing (including the child's address and school location) should be included in the PHR. Confidential HIV-related information may be included *only* if all persons receiving the report are authorized to have access to it.

Any worker with a role in the case can launch a PHR. He/she can select "pre-fill" or "no pre-fill" as an option. Selecting "pre-fill" will produce a document that includes most recent information from the Family Assessment and Service Plan (FASP), Plan Amendments, Removal Updates, and Health and Education modules. If the "pre-fill" option is selected, it is *essential* that the caseworker review the information so make sure it is appropriate, accurate, and up to date.

The report must be kept in draft form until all required reviews have taken place. Once the report is marked as final, it can no longer be edited. It can then be printed and filed with the court. Copies must be mailed to the required parties (08-OCFS-ADM-01). If reports are sent by e-mail, they must be password-protected. ACS workers and contract agency workers in New York City must upload PHRs to the Legal Tracking System (LTS).

permanency planning goal. In evaluating the present safety of the child, the LDSS should also focus on why the child was previously determined to be unsafe and placed into out-of-home care, and on what would have to occur for the child to return home safely, even when services may still be necessary.

d. *Permanency hearing findings*

At the close of the permanency hearing, the court must make specific findings related to the child's best interests, including determining whether placement should be terminated and the child returned home. If the child will not be returned home, the court must determine whether reasonable efforts have been made to finalize the permanency plan.

LDSS or VA staff may be responsible for carrying out the court's orders related to the placement of a child. The LDSS must make diligent efforts to encourage and strengthen the parental relationship (when those efforts will not be detrimental to the child). Diligent efforts may include:

- Assisting the parent in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment
- Encouraging and facilitating visitation with the child and the parent/PLR
- Encouraging and facilitating visitation with the child and any non-custodial parent and/or grandparents who have obtained an order of visitation
- Encouraging and facilitating visitation with the child and his or her siblings, including half siblings or those who would be deemed siblings or half siblings but for the termination of parental rights or death of a parent

If necessary, the LDSS or VA staff may be responsible for instituting a proceeding to legally free the child for adoption [FCA §1055(c) and (d)].

e. *Placement with relatives*

The Family Court may direct the LDSS Commissioner to place the child with a relative. The LDSS should consult the following policies issued by the Office of Children and Family Services (OCFS):

- 86 ADM-33, Requirements for Approval of Relative Foster Boarding Homes and Policy on Use of Relatives as Foster Care Providers or as Alternatives to Placement
- 88 ADM-48, Expansion of Population Eligible to Become Approved Relative Foster Parents
- 09-OCFS-ADM-05, New Statutes Affecting Kinship Care: Chapters 404 and 519 of the Laws of 2008
- 11-OCFS-ADM-03, Kinship Guardianship Assistance Program (KinGAP).
- 12-OCFS-LCM-03, Kinship Guardianship Assistance Program Payments - Excludable Income for Child Care Subsidy Program Eligibility
- 14-OCFS-LCM-15, Accurate Reporting of Kinship Foster Care Placements
- 16-OCFS-ADM-10, Continuation of the Kinship Guardianship Assistance Program (KinGAP) to A Successor Guardian

OCFS regulations for approving relatives as foster parents are found in 18 NYCRR 443, which also includes the standards for approving relative foster parent homes on an emergency basis. A child may not be placed in an alternative living setting if there is a court

order giving the LDSS care and custody of the child. Such a court order signifies that the child is a foster child must be placed in a licensed, certified or approved foster home or facility. If the child has medical or psychiatric needs that require hospitalization, such a placement is appropriate.

4. Order of protection (OOP)

An order of protection requires a person to comply with a specific condition and/or to refrain from a specific activity or behavior. An order of protection may be issued in conjunction with another order or may be issued independently of any other orders [FCA §1056(1)].

An order of protection may order the respondent to:

- Stay away from the home, school or business or place of employment of the child, other spouse, parent, or person otherwise legally responsible for the child's care and to stay away from any other specific location designated by the court
- Refrain from committing a family offense as defined in FCA §812 or any criminal offense against the child, other parent, or any person to whom custody of the child is awarded or from harassing, intimidating, or threatening such persons
- Refrain from acts of omission or commission that create an unreasonable risk to the health, safety, and welfare of the child
- Provide for medical care and/or treatment, either directly or by medical or health insurance, for expenses incurred as the result of the incidents that led to the order of protection
- Refrain from intentionally injuring or killing, without justification, a companion animal the respondent knows to be owned, possessed, leased, kept, or held by the person protected by the order of protection or a minor residing in such person's household
- Promptly return specified identification documents to the person protected by the order of protection (e.g., birth certificates, DMV registration)
- Permit a parent or other person entitled to visitation by a court order or separation agreement to visit the child at stated periods
- Permit a designated party to enter the residence during a specified time period to remove personal belongings not at issue in the Article 10 proceeding or in another proceeding under the FCA or Domestic Relations Law
- Observe such other conditions as the court finds necessary to further the protection of the child

a. *Orders of protection issued in conjunction with other court orders*

A Family Court may issue an order of protection alone in assistance or in conjunction with another order. When an order of protection is issued with another order, the order of protection and the other order will remain in effect for the same period. The court may also extend both orders [FCA §1056(1)].

b. *Orders of protection issued independently of other orders*

The Family Court also has the option of issuing an order of protection independently of any other dispositional order. A court may issue an order of protection independently when a child needs to be protected from a person who was a member of the child's household or a PLR and is no longer a member of the child's household at the time of

the disposition and is not related to the child by blood or marriage. An order of protection issued against such a person no longer in the child's household or related to the child may remain in effect for any period of time up to the child's 18th birthday and may contain such conditions as the court deems necessary and proper to protect the health and safety of the child and/or the child's caretaker [FCA §1056(4)].

5. Order of supervision

Upon disposition, or at any time during an Article 10 proceeding, the Family Court may release the child to the respondent(s) for a period of up to one year and the court may extend the period for up to one additional year for good cause. In conjunction with such an order, the court may place the respondent(s) under the supervision of the LDSS, CPS, or other authorized agency [FCA §§1027(d) and 1057(a)].

An order of supervision directs the respondent to comply with specific terms and conditions and the actions that the child protective agency or other supervising entity must take to exercise the supervision [FCA §1057(b)].

An order of supervision may also be issued in conjunction with:

- An order releasing the child to a non-respondent parent or to a person who was the child's legal custodian or guardian at the time the petition was filed who is not a respondent to the Article 10 proceeding pursuant to FCA §1054
- An order placing the child pursuant to FCA §1055
- An order of protection issued pursuant to FCA §1056 [FCA §1057(b)]

Any orders of supervision issued by the Family Court are only applicable to persons who are respondents in Article 10 proceedings. A court may not place a non-respondent under the supervision of CPS.

An order of supervision must contain at least one of the following terms and conditions, requiring that the respondent:

1. Observe any of the terms and conditions set forth in 22 NYCRR 205.83 (a), including refraining from specified acts or conditions; providing adequate food, clothing housing, and medical care; providing proper care and supervision, including obtaining medical care or substance abuse treatment; assuring attendance at school; and cooperating in obtaining medical or substance abuse training, employment, or counseling services.
2. Cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse.
3. Meet with the supervising agency alone and with the child when directed to do so by that agency.
4. Report to the supervising agency when directed to do so by that agency.
5. Cooperate with the supervising agency in arranging for and allowing visitation in the home or other place.
6. Notify the supervising agency immediately of any change of residence or employment of the respondent or of the child.

7. Do or refrain from doing any other specified act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help safeguard the physical, mental and emotional well-being of the child [22 NYCRR 205.83(b)].

a. *Reporting requirements for orders of supervision*

When a court issues an order of supervision, the court may require CPS to submit progress reports to the court, the parties, and the attorney for the child. When an order of disposition is issued upon the consent of the parties and the attorney for the child, CPS must submit a report no later than 90 days after the order is issued and no later than 60 days prior to the expiration of the order. However, the court has the authority to waive the submission of any progress reports [FCA §1057(c)].

L. Expiration of orders

CPS must submit a status report to the court, the parties (including the non-respondent parent) and the attorney for the child no later than 60 days prior to either:

- The expiration of any order issued at the conclusion of the dispositional hearing that suspends judgement, releases the child to a non-respondent parent, legal custodian or guardian, issues an order of protection, or releases the child to the respondent or places the respondent under supervision or both; **or**
- The conclusion of the period of an adjournment in contemplation of dismissal (ACD) [FCA §1058].

Such a report is not required when an application has been made for an extension of a dispositional order or an adjournment, or, with respect to an ACD dismissal, no violations of the court's ACD order are before the court. CPS is required to make such a report whether or not the child has been or will be returned to the family. The report must include information about the status and circumstances of the child and family and any actions taken or contemplated by CPS with respect to the child and family [FCA §1058].

M. Termination of reasonable efforts in aggravated circumstances

The LDSS may request permission from the court to cease reasonable efforts to reunify a child with the parent when aggravated circumstances exist [FCA §1039-b]. The aggravated circumstances that justify a request to the court to cease reasonable efforts include [FCA §1012(j)]:

1. The child was found to be severely or repeatedly abused.
2. The child was found to be abused within five years after being returned from a foster care placement that was made due to a neglect finding, provided that the respondent(s) in each of the proceedings is the same.
3. The court has found by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over at least six months from the date of removal, to engage in necessary services to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepared for the return of the child; and, after the receipt of prescribed notices, has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return.

   If the court determines that the parent had adequate justification for his or her failure to engage in or obtain services, the court will not permit the discontinuation of reasonable efforts. Adequate justification includes, but is not limited to, lack of child care, no transportation, and work schedule conflicts with necessary services.
4. A child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

N. Termination of parental rights due to severe or repeated abuse

Parental rights may be terminated on the grounds of severe or repeated abuse [SSL §384-b(8)]. LDSS staff should consult with their agency attorney when a parental rights termination based upon severe or repeated abuse is being considered.

1. Severely abused child

A child is "severely abused" by his or her parent when any one of these situations exists [SSL §384-b(8)(a)]:

- Reckless or intentional acts by the parent have been committed under circumstances evincing a depraved indifference to human life, which have resulted in serious physical injury to the child as defined in Penal Law §10.00(10).
- The court has made a finding of sexual abuse as defined in FCA §1012(e)(iii) and the parent has violated or knowingly allowed another to violate any of the following sections of the Penal Law:[5]

  130.25 Rape in the 3rd Degree
  130.30 Rape in the 2nd Degree
  130.35 Rape in the 1st Degree
  130.40 Criminal Sexual Act in the 3rd Degree
  130.45 Criminal Sexual Act in the 2nd Degree
  130.50 Criminal Sexual Act in the 1st Degree
  130.65 Sexual Abuse in the 1st Degree
  130.67 Aggravated Sexual Abuse in the 2nd Degree
  130.70 Aggravated Sexual Abuse in the 1st Degree
  130.75 Course of Sexual Conduct Against a Child in the 1st Degree
  130.80 Course of Sexual Conduct Against a Child in the 2nd Degree
  130.95 Predatory Sexual Assault
  130.96 Predatory Sexual Assault Against a Child

- The parent has been convicted of a crime under the following sections of the Penal Law:

  125.27 Murder in the 1st Degree
  125.25 Murder in the 2nd Degree
  125.20 Manslaughter in the 1st degree
  125.15 Manslaughter in the 2nd Degree

  and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible; or another parent of the child, unless the convicted parent was a victim of abuse by the decedent parent and such abuse was a factor in causing the homicide; **or**

  the parent has been convicted of an attempt to commit any of the crimes listed above, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible or another parent of

[5] For the purpose of termination of parental rights in regard to a severely abused child, the collaboration requirements contained in the Penal Law for these offenses do not apply.

the child, unless the convicted parent was a victim of abuse by the decedent parent and such abuse was a factor in causing the attempted homicide.

- The parent has been convicted of Criminal Solicitation as defined in Penal Law Article 100, Conspiracy as defined in Penal Law Article 105 or Criminal Facilitation as defined in Penal Law Article 115 for conspiring, soliciting, or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible.
- The parent has been convicted of Assault 2nd Degree as defined in Penal Law §120.05, Assault 1st Degree as defined in Penal Law §120.10, or Aggravated Assault as defined in Penal Law §120.12 and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible.
- The parent has been convicted under the law in any other jurisdiction of an offense that includes all of the essential elements of any crime specified above.

In addition, in order for the court to find that a child was severely abused, the agency must have made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. If, however, the Family Court determined that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate such diligent efforts.

2. Repeatedly abused child

A child is a “repeatedly abused child” by his or her parent when [SSL §384-b(8)(b)]:

The court has made a finding of abuse in accordance with FCA §1012(e)(i) or as defined in FCA §1012(e)(iii); provided, however, that in the latter circumstance, the parent must have committed or knowingly allowed to be committed a felony sex offense in violation of the felony sex offense sections of the Penal Law listed above under “severely abused child”; **and**

The child or another child for whose care such parent is or has been legally responsible has been previously found, within five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in FCA §1012(e)(i) or §1012(e)(iii). For a finding under FCA §1012(e)(iii), however, the parent must have committed or knowingly allowed the commission of a felony sex offense in violation of the sections of the sex offense sections of the Penal Law listed above under “severely abused child”; **or**

The parent has been convicted of a sexual offense listed above under “severely abused child” against the child, a sibling of the child, or another child for whose care such parent is or has been legally responsible, within the five-year period immediately preceding the initiation of the Article 10 proceeding in which abuse is found; **and**

The agency must have made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. If, however, the court has previously

determined that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency is not required to demonstrate diligent efforts.

The Family Court may also make a finding of severe or repeated abuse against a person who is not a parent of the abused child. This includes any PLR as defined by FCA §1012(g) who resides in the household of the abused child [FCA §1051(e)].

The law also allows an adjudication of derivative severe abuse regarding the children of the PLR, so these children may also be protected. A derivative finding refers to a determination by the court that the behavior of the respondent in abusing or maltreating one child poses sufficient harm or risk of harm to other children residing in the home that the respondent should also be deemed to have been abusive or neglectful of those other children (See 16-OCFS-INF-09.).

O. Abandoned child (under age one)

The following procedures must be followed in a child protective proceeding when a child under the age of one has been abandoned [FCA §1055(b)(ii)].

Where neither of the parents appear after due notice, the court must direct the LDSS in the Article 10 disposition order to:

- Commence a diligent search to locate the child's non-appearing parent or parents or other known relatives who are legally responsible for the child
- Commence a proceeding pursuant to SSL §384-b to commit guardianship and custody of such child to an authorized agency within six months of when the LDSS assumed care and custody of the child, unless there has been communication and visitation between the child and such parent or parents, other known relatives, or persons legally responsible

The LDSS must also provide written notice to the child's parent or parents, other known relatives, or persons legally responsible.

Courts sometimes vary regarding the level of diligent effort required to ascertain a parent's whereabouts. The caseworker should attempt to check with as many of the following as possible.

- Social media
- Internet search engine
- The local telephone book, directory assistance, and any persons having the same name as the missing parent
- Last known address through registered or certified mail
- Family members or friends
- Federal agencies, such as the Social Security Administration
- U.S. Postal Service
- State agencies:
  - Department of Motor Vehicles
  - Department of Corrections and Community Supervision
  - New York State Police
  - Department of Health (death certificate)
  - Unemployment Insurance Office (must have parent's Social Security number)
  - Department of Taxation and Finance
- Parent Locator Service (used for child support enforcement)
- Putative Father Registry
- Local law enforcement agencies
- Any additional leads or sources of information

The search must be conducted as quickly as possible and all efforts must be documented in the child's case record [FCA §1055(b)(ii)]. If parents or other known relatives are located, the LDSS must give them a written notice in Spanish and English including the following information:

- The LDSS must commence a proceeding to terminate parental rights six months from the date the LDSS assumed care and custody of the child

- The parent has not visited or communicated with the child since the child's placement into foster care
- If no such visitation or communication between the parent and the child occurs within six months of placement, the child will be deemed to be an abandoned child and a proceeding will be commenced to commit guardianship and custody to the LDSS
- The LDSS has the legal responsibility to reunite and reconcile families whenever possible and to offer services and assistance for that purpose
- The name, address and telephone number of the assigned LDSS caseworker who can provide information, services, and assistance with respect to reuniting the family
- It is the parents', relatives' or other legally responsible person's responsibility to visit and communicate with the child and that such actions may avoid the necessity of initiating a proceeding to commit the guardianship and custody to an authorized agency [FCA §1055(b)(iii)]

Chapter 10: **State Regional Offices**

A. Overview A-1

1. Division of Child Welfare and Community Services A-1
2. Regional Offices A-1

B. Technical assistance B-1

C. Role in child protective investigations C-1

1. Foster Boarding Homes C-1
2. Child Care C-1
3. Near fatalities C-2
4. Fatalities C-2

D. Reviews D-1

1. Ongoing Monitoring Assessment (OMA) D-1
2. Safety and Permanency Assessment (SPA) D-1
3. Voluntary Agency Review (VAR) D-1

E. Institutional Abuse Investigations (IAB) E-1

Chapter 10: **State Regional Offices**

A. Overview

1. Division of Child Welfare and Community Services

The Division of Child Welfare and Community Services (CWCS) is a division of the Office of Children and Family Services (OCFS). CWCS supervises and supports the 58 local departments of social services (LDSSs) of local social services districts, youth bureaus, and several hundred voluntary authorized agencies (VAs) in providing quality services to children, youth, families, and vulnerable adults. These services are designed to achieve safety, permanency, and well-being for at-risk populations. CWCS helps its community partners achieve these goals by:

- Providing funding, guidance, and technical assistance
- Monitoring, assessing, and enforcing compliance with laws and regulations
- Working in partnership with stakeholders at the local, state, and federal levels [SSL §§17, 20 & 34]

The CWCS Deputy Commissioner is responsible for the overall direction and management of CWCS, both in the OCFS Home Office and in six Regional Offices around the state. Much of that work is conducted by the CWCS Office of Regional Operations and Practice Improvement (ROPI), which includes the Bureau of Native American Services. ROPI provides direct support to LDSSs, the St. Regis Mohawk Tribe, and VAs, that provide direct services to children and families. ROPI has six established regional offices around New York State where staff are stationed closer to the agencies that they oversee and serve.

2. Regional Offices

The following are the six OCFS CWCS regional offices with the counties they serve:

Albany Regional Office

Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saint Regis Mohawk Tribe, Saratoga, Schenectady, Schoharie, Warren, and Washington.

Buffalo Regional Office

Allegany; Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming.

New York City Regional Office

Bronx, Kings, New York, Richmond, and Queens.

Rochester Regional Office

Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates.

Spring Valley Regional Office

Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester.

Syracuse Regional Office

Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins.

The Regional Offices maintain oversight of field activities used to implement child welfare programs by monitoring and providing technical assistance to child protective services (CPS), preventive services, foster care services, and permanency (including adoption) services. Regional Offices also provide support for domestic violence services and services to youth. The oversight functions that the Regional Offices perform include, but are not limited to:

- Technical assistance to LDSSs, tribal nations and voluntary agencies regarding child welfare policies, procedures, and best practices
- Reviewing compliance with legal requirements by monitoring voluntary authorized agencies regarding the provision of foster care and adoption services
- Ongoing Monitoring and Assessments (OMAs) for local child protective services
- Safety and Permanency Assessments (SPAs) for local foster care services
- Voluntary Agency Reviews (VARs) for residential services for foster care youth
- Institutional Abuse and Neglect Investigations on behalf of the Justice Center for the Protection of People with Special Needs
- Reviewing compliance with legal requirements by monitoring Crisis Shelter Programs and Transitional Independent Living Support Programs for runaway and homeless youth
- Support for LDSS and VAs in achieving permanency and well-being for children in foster care via training, technical assistance and public awareness programming
- Reviewing compliance with legal requirements by monitoring residential programs for victims of domestic violence
- Health and fire safety inspections of licensed residential programs.

B. Technical assistance

OCFS Regional Office personnel play a significant role in providing technical assistance to the staffs of LDSSs and VAs. The identification of a need for technical assistance can arise from many situations, including, but not limited to:

- Reviews of child protective investigations
- Foster care, adoptive, and preventive services program reviews
- Regional Office reviews of performance data
- LDSS requests – the LDSS may call the Regional Office with specific questions or requests
- SCR referral – the Statewide Central Register of Child Abuse and Maltreatment (SCR) may contact the Regional Office to voice concerns about an LDSS practice(s), known as a Referral for Action
- Family assessment response (FAR) Q&As and coaching sessions, where problems may be identified by either CPS, OCFS, or training staff
- Written complaints by a subject of a report, a mandated reporter or other person may be made directly to the Regional Office or channeled to the Regional Office by the Office of the Governor or by the OCFS Commissioner's office. The Regional Office investigates these complaints, and, where necessary, provides technical assistance.

As part of CONNECTIONS (CONNX) implementation and support, Regional Office staff provide technical assistance to LDSSs on system functionality and educate staff on how CONNX supports child welfare practice.

In addition, the Regional Office may identify a need for training within a local district, make a referral for such training to OCFS Home Office, and participate in the training activities.

The support provided by the Regional Offices to their partners at LDSSs and VAs varies according to the specific need. Needs can vary based on region, resources, and other variables. It is the role of Regional Offices to serve as a resource to partners in the field and to be available to assist them directly or by coordinating additional resources.

Regional Office staff provide the conduit through which CWCS promotes and implements program improvement initiatives at LDSSs and VAs. They support continuous quality improvement efforts by using their monitoring responsibilities to inform program improvement. The relationship between Regional Offices, LDSSs, and VAs is vital to the efforts of all those entities to improve outcomes for children.

C. Role in child protective investigations

1. Foster Boarding Homes

When a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment involving a child in a foster boarding home, multiple agencies may have an interest in the report and the safety of the child(ren) in the foster home. These agencies include: the LDSS that is conducting the CPS investigation; the LDSS with legal custody of the children in foster care named in the CPS report; and the LDSS or VA that certified or approved the foster home. In some cases, they all may be the same LDSS; however, often there will be more than one interested agency. In such cases, notification, coordination, and cooperation are vitally important in meeting the safety needs of the child(ren) in the foster home. [1] (See **Chapter 7,** *Investigations in foster homes and child day care programs.)*

When the SCR receives a report in which the subject is a foster parent, it notifies the Regional Office with oversight for the Local District from which the child was placed. Regional Offices are responsible for monitoring whether the LDSS and VA adhere to the applicable regulatory, statutory, and policy standards. This includes determining whether they make the appropriate collateral contacts, particularly when a VA is providing foster care services. Regional Office staff may exercise their oversight responsibilities by directly communicating with the LDSS and the VA, reviewing casework activities, and assisting the LDSS and the VA in negotiating each entity's role

2. Child Care

The OCFS Division of Child Care Services (DCCS) has its own Regional Offices, which often are in the same locations as CWCS Regional Offices. The DCCS, however, also has a unique Long Island Regional Office, which covers the counties of Nassau and Suffolk.

The DCCS Regional Office collaborates with the LDSS whenever the LDSS conducts a CPS investigation of a report alleging the abuse or maltreatment of a child receiving child care services in any day care setting, which includes:

- Day care center
- Small day care center
- School age child care program
- Group family day care
- Family day care home
- Any child day care program that is operating illegally

The staff of the DCCS Regional Office or a designated Child Care Coordinating Council also conducts its own assessment of the potential violations of day care regulations associated with the CPS report, which should be coordinated with the CPS investigation. See (See **Chapter 7,** *Investigations in foster homes and child day care programs.)*

[1] 16-OCFS-ADM-13

3. Near fatalities[2]

As defined in the federal Child Abuse Prevention and Treatment Act (CAPTA), a "near fatality" means an act that resulted in the child being in serious or critical condition as certified by a physician [42 USC §5106a(b)(4)(A); SSL §422-a(1)(d)]. Just as there are state and federal requirements regarding certain child fatalities, there are also mandates regarding *near* fatalities of children in the child welfare system.

The LDSS is responsible for using Form OCFS-7065 (3/2008) to notify its Regional Office of the near fatality of a child just as it does with a child fatality.

4. Fatalities

Regional Office staff are notified of the following incidents:

- A child fatality is registered as a report from the SCR
- A child dies while in the care and custody or guardianship and custody of the LDSS or VA in a foster care placement
- A child dies who is part of an open CPS or preventive services case [SSL §20(5)]

The LDSS is required to notify its Regional Office by telephone within 24 hours of learning of the death of a child in an open CPS or preventive services case. The LDSS or VA must then send Form OCFS-7065 (3/2008), "Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Child in Foster Care and Deaths of Children in Open Child Protective or Preventive Cases," to the Regional Office within 72 hours of the death of the child.[3]

Regional Office staff may take the following steps when notified of a fatality:

- Participate in a dialogue with the LDSS and/or the VA regarding the case
- Provide support to involved agencies in adhering to legal and regulatory requirements
- Discuss and provide guidance to the LDSS regarding practice issues related to the fatality and ensuing investigation
- Participate in a Multi-Disciplinary Team (MDT) case review and/or a Child Fatality Review Team (CFRT) review

In addition to supporting the CPS investigation of the child fatality, the Regional Office has a role in the development of the Individual Child Fatality Review report that must be issued following the CPS investigation. Should practice issues come to light while writing the report, those issues will be addressed between the Regional Office and the LDSS. The Regional Office also facilitates communication between the LDSS and Home Office about other identified issues in the Individual Child Fatality Report, as needed.

Once a Child Fatality Review report is issued by OCFS, it may develop a Program Improvement Plan (PIP) to address statutory or regulatory noncompliance issues within the LDSS. The Regional Office is responsible for monitoring the implementation and completion of the LDSS's PIP.

Please see **Chapter 11***, Child Fatality Reviews,* for more information on the LDSS's role and responsibilities regarding the preparation of Child Fatality Review reports.

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[2] OCFS. (1999). "Child Protective Services Legislation" (99-OCFS-LCM-26)

[3] OCFS. (2006). "Notification to OCFS of the Death of Children in Open Child Protective or Preventive Services Cases" (06-OCFS-LCM-13)

D. Reviews

Regional Offices play the lead role for OCFS in providing the oversight necessary to determine whether statewide standards are maintained in child welfare services, including child protective services. Periodic reviews of case practice are one means by which OCFS, the LDSS and/or VA can identify strengths and weaknesses. The LDSS or VA can then address identified issues, with technical assistance provided by the Regional Office.

1. Ongoing Monitoring Assessment (OMA)

The CWCS Home Office staff and the Regional Offices collaborate with LDSSs to conduct Ongoing Monitoring Assessments (OMAs) of a random cohort of CPS case records in each LDSS on a four-year cycle. The purpose of the OMA is to improve practice at the local level. The OMA tool is formulated to align in some aspects with the federal Child and Family Service Review.

2. Safety and Permanency Assessment (SPA)

Safety and Permanency Assessments (SPAs) are conducted every four years. Foster care case records are reviewed, focusing on compliance with state laws and regulations, as well as best practices. SPAs provide an opportunity to review not just individual cases, but also systemic practices. The purpose of the SPA is to inform the LDSS about areas needing improvement as well as areas of success.

3. Voluntary Agency Review (VAR)

Voluntary Agency Review (VAR) reviews are conducted every three years by Regional Office staff and staff of VAs. Regional Offices gather information from case records, onsite inspections, and interviews with youth, families, and VA staff. As with the other reviews, the focus is on regulatory and statutory compliance along with best practice. The purpose of the process is to inform the VAs about areas needing improvement as well as areas of success.

All three types of reviews culminate in the development of a PIP by the Regional Office and the LDSS or VA. The PIP lays out the activities the LDSS or VA will undertake to bring their work into alignment with any statuary, regulatory, and/or practice issues that were identified in the review. Mapping out program improvement activities is done collaboratively and may also incorporate input from other partners. The stakeholders may choose to use new, emerging, or existing strategies to address identified opportunities for improvement. PIPs help inform the work of all agencies involved in the improvement of the safety, permanency, and well-being of children in New York.

E. Institutional Abuse Investigations (IAB)

Reports alleging abuse or neglect in residential care programs licensed, certified, or operated by OCFS are under the jurisdiction of the Justice Center for the Protection of People with Special Needs (Justice Center).

The Justice Center was established by Chapter 501 of the Laws of 2012 and began operation on June 30, 2013. Other programs under the Justice Center's jurisdiction include programs under the authority of the Office of Mental Health, Office for People with Developmental Disabilities, Office of Alcoholism and Substance Abuse Services, State Education Department, and Department of Health.

All reports alleging the abuse or neglect of persons in programs under the Justice Center's jurisdiction, including reports of abuse and neglect of children in those programs, must be made to the Justice Center's Vulnerable Persons Central Register (VPCR). The VPCR and the SCR have an agreement to provide a live transfer to each other if any call is mistakenly made to the incorrect hotline.

The Justice Center, after concluding a call, determines the proper classification of the report. The choices for classification are 1) abuse or neglect, 2) significant incident, and 3) non-New York Justice Center (non-NYJC) report. All abuse and neglect reports at a residential program operated by OCFS are investigated by the Justice Center. Allegations of abuse or neglect at programs licensed or certified by OCFS may be delegated by the Justice Center to OCFS ROPI staff for investigation. No OCFS licensed, certified, or operated program is delegated to conduct investigations of abuse or neglect.

A significant incident is an event that, while not an incident of abuse or neglect, may result in or has the potential to result in harm to the health, safety, or welfare of a vulnerable person and is treated as a programmatic concern which can sometimes also be a regulatory or licensing concern.

Non-NYJC reports are reports for which the Justice Center does not have jurisdiction, or reports that do not contain an allegation of a significant incident, abuse, or neglect.

The OCFS program types under Justice Center jurisdiction are [SSL §488(4)(b); 18 NYCRR 433.2(a)]:

- OCFS operated juvenile justice programs
- OCFS certified youth detention programs
- Runaway and homeless youth programs
- Family-type homes for adults
- Congregate care programs, including:
  - *Institution:* any facility for the care and maintenance of 13 or more children operated by a child-care agency
  - *Group residence:* an institution for the care and maintenance of not more than 25 children operated by an authorized agency
  - *Group home:* a family-type home for the care and maintenance of not less than seven, nor more than twelve children who are at least five years of age, operated by an authorized agency, except that the minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is in the same facility
  - *Agency operated boarding home:* family-type home for the care and maintenance of not more than six children operated by an authorized agency, except that such a home may provide care for more than six brothers and sisters of the same family
  - *Close to home programs:* agency operated boarding homes, group homes, group residences or institutions operated as part of New York City's "Close to Home" program.

If a county has custody of a child placed in one of these programs, the Justice Center should notify the county about any determination of abuse or neglect of that child [SSL §493(3)(c)]. The Regional Office staff who conduct these investigations on behalf of the Justice Center must comply with the laws and policies specific to the Justice Center.

Chapter 11: **Child Fatality Reviews**

A. Child Fatality Reviews A-1

1. Purpose of Child Fatality Reviews A-1
2. Role of OCFS in Child Fatality Reviews A-1
   - *a. Requirements A-1*
   - *b. Responsibilities A-1*
3. Role of Child Fatality Review Teams in Child Fatality Reviews A-2
   - *a. Members / Structure A-2*
   - *b. Responsibilities A-3*

B. Individual Child Fatality Review reports B-1

1. Contents of the Individual Child Fatality Review report B-1
   - *a. Structure of the report B-1*
   - *b. Assessment of the investigation B-1*
2. Sharing the Individual Child Fatality Report B-2
   - *a. Requirements B-2*
   - *b. Confidentiality / Release to the Public B-3*
3. LDSS Program Improvement Plans B-3
   - *a. Development of an LDSS Program Improvement Plan B-3*
   - *b. Monitoring LDSS Program Improvement Plans B-4*

Chapter 11: **Child Fatality Reviews**

A. Child Fatality Reviews

1. Purpose of Child Fatality Reviews

Engaging in a retrospective review of the circumstances around a child death aims to accomplish three key goals:

- Protect the safety and well-being of children, especially surviving siblings and other children in the household of the deceased child;
- Identify actions to help prevent similar fatalities in the future; and
- Identify appropriate and legitimate individual and systemic accountability for child welfare actions taken prior to and subsequent to a child fatality.

2. Role of OCFS in Child Fatality Reviews

a. *Requirements*

Under New York State law, the Office of Children and Family Services (OCFS) must prepare and issue a fatality report, except if a fatality report is prepared by an OCFS approved local or regional child fatality review team (CFRT), for all child fatalities in the following categories [SSL §20(5)(a)]:

- A report involving the death of a child is made to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR);
- A child who, at the time of his or her death, is in the care and custody, or the guardianship and custody, of the local department of social services (LDSS) or a voluntary authorized agency (VA), other than a child who is a vulnerable person as defined in SSL §488(15);[1]
- A child for whom the LDSS has an open Child Protective Services (CPS) case at the time of his or her death. This includes cases in the investigative track and the Family Assessment Response (FAR) track, and cases where protective services are being monitored or provided by CPS; or
- A child for whom the LDSS has an open Preventive Services case at the time of his or her death.

When a CFRT prepares the fatality report, OCFS does not have to prepare a separate report, but OCFS is ultimately responsible for reviewing and issuing the report developed by the CFRT. Please see **Section A.3**, *Role of Child Fatality Review Teams in Child Fatality Reviews* [SSL §422-b].

b. *Responsibilities*

SSL §20(5)(a) states that when a child dies under one of the circumstances described above, OCFS is responsible for taking the following actions:

[1] As per the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012), OCFS is not responsible for issuing fatality reports involving children in residential facilities or programs. These fatalities are reported to and investigated by the Justice Center for the Protection of People with Special Needs.

- Investigate, or provide for the investigation of, the cause and circumstance surrounding such death. "[P]rovide for the investigation" means overseeing the investigative activities of an LDSS.
- Review the investigation of the cause and circumstances surrounding the death.
- Prepare and issue a report on each death unless such report is issued by an approved CFRT in accordance with SSL §422-b.

As a result of the Protection of People with Special Needs Act [Chapter 501 of the Laws of 2012], OCFS is no longer responsible for issuing fatality reports involving children in the care of residential facilities or programs licensed, certified, or operated by OCFS. These fatalities are reported to and investigated by the Justice Center for the Protection of People with Special Needs (Justice Center), which is also responsible for issuing the associated reports. Authorized agencies must still notify OCFS within 24 hours of the death of any child in foster care where the investigation of the fatality is under the jurisdiction of the Justice Center, even though OCFS will not be issuing the report [18 NYCRR 441.7(c)(1)].

Once an IFCR is finalized, OCFS is responsible for sending the report to:

- The LDSS in the county where the child's death occurred;
- The chief executive officer in the county where the child's death occurred;
- The chairperson of the local legislative body of the county where the child's death occurred; and
- The LDSS that had care and custody, or custody and guardianship, of the child, if different than the LDSS in the county where the death occurred [SSL §22(5)(c)].

OCFS also must notify the Temporary President of the State Senate and the Speaker of the State Assembly when a child fatality report is issued. The law provides for certain circumstances in which a report may be released to the public. Please see **Section B.2.b.** of this chapter for a specific discussion of public release.

3. Role of Child Fatality Review Teams in Child Fatality Reviews

Social Services Law §422-b allows for the establishment of Child Fatality Review Teams (CFRTs). A CFRT may be established at a local or regional level, with the approval of OCFS, for the purpose of investigating child fatalities in any of the categories on which OCFS is required to investigate and report, and for the purpose of preparing a child fatality report for any of those child deaths [SSL §§20(5)(a) & 422-b(1)]. A CFRT is also authorized to investigate the unexplained or unexpected death of any child under the age of 18 [SSL §422-b(1)].

a. *Members / Structure*

A CFRT must include representatives from [SSL §422-b(3)]:

- Child Protective Services
- OCFS
- County Department of Health, health commissioner (or designee), or public health director (or designee)
- Medical Examiner or Coroner's office
- District Attorney's office
- County Attorney's office

- Local and State law enforcement
- Emergency Medical Services
- A pediatrician or comparable medical professional, preferably with expertise in the area of child abuse and maltreatment or in forensic pediatrics

While not statutorily required to do so, a CFRT may also include representatives from:

- Units of the local department of social services other than CPS
- Domestic violence agencies
- Mental health agencies
- Substance abuse programs
- Hospitals
- Local schools
- Family Court

Each CFRT has a team coordinator who engages in administrative and programmatic work to support the team's missions. For example, the team coordinator determines which cases to review according to the team's protocols and organizes team meetings.

The team coordinator must submit an annual child fatality report to OCFS summarizing:

- The number of deaths reviewed;
- The number of team meetings;
- The number of Section 20(5) Child Fatality Reports prepared by the CFRT, if any;
- Data from team reviews, including patterns, trends, findings, and recommendations for improved practice;
- Community interventions; and
- The practices and functioning of the team.

b. *Responsibilities*

Approved CFRTs may investigate the death of any child who dies under any of the circumstances cited in SSL §20(5)(a). (See **Section A.2.a,** *Requirements*.) A CFRT also may review the unexplained or unexpected death of any child under the age of 18 [SSL §422-b(1)]. A CFRT may prepare an (ICFR) for any investigation and review conducted by the CFRT of a child fatality falling under the circumstances set forth in SSL §20(5)(a). A CFRT that chooses to conduct an investigation and review of a child fatality and prepare a fatality report has the same authority as OCFS regarding the preparation of fatality reports [SSL §422-b(2)].

CFRTs are authorized by law to access the confidential information in pending or indicated SCR reports [SSL §§422(4)(A)(w) and 422-b(2) & (4)]. State law also authorizes CFRT members access to legally sealed unfounded reports for the purpose of preparing such a fatality report [SSL §422(5)(a)(ii)]. CFRTs also have access to any other information, including confidential information (other than information protected by a statutory privilege or information not available pursuant to federal law), that they need to prepare a fatality report [SSL §§20(5)(d); 422-b(2)]. Accordingly, a CFRT that is investigating and/or reviewing a child fatality under SSL §20(5)(a), but that does not issue a report on that fatality, has access to pending and indicated SCR reports, but not to unfounded reports, FAR reports, or

other confidential information. LDSSs, authorized voluntary agencies (VAs), and any other agencies are required to provide a CFRT with requested information they are authorized to provide within 21 days of receipt of the request [SSL §422-b(4)].

In addition to reviewing those child fatalities specified in statute [(SSL §20(5)(a)], CFRTs may also choose to review near-fatalities and "expected" or "explained" fatalities. CFRTs cannot be given access, however, to confidential information for such reviews and OCFS does not fund such reviews.

When a CFRT prepares a child fatality report, OCFS is not obligated to prepare a separate fatality report. OCFS is responsible, for reviewing and physically issuing the CFRT-prepared report [SSL §422-b(2) & (6)]. OCFS has the final authority to make any needed modifications to the report prepared by the CFRT.

CFRTs must abide by the same confidentiality and re-disclosure provisions as OCFS regarding child fatality reports [SSL §422-b(6)]. It is imperative that CFRTs strictly protect the confidentiality of the sensitive material they access as part of their duties. Members must sign confidentiality agreements as a condition of their membership on the team.

Each OCFS-approved CFRT must use a written protocol to guide its work and assist team members in their mission. OCFS provides a model protocol that CFRTs can use. (See Appendix L in the OCFS *Child Fatality Review Practice Guidance Manual.)* It is important that each team's protocol include the team's mission and the specific information outlined in the protocol template that describes how the team plans to fulfill its mission. Strong protocols promote the protection of confidentiality and optimize the work of the CFRTs.

B. Individual Child Fatality Review reports

1. Contents of the Individual Child Fatality Review report

a. *Structure of the report*

An ICFR is prepared by OCFS or an OCFS approved CFRT, and must contain the following [SSL §20(5)(b)]:

- The cause of death, whether from natural or other causes
- Any extraordinary or pertinent information concerning the circumstances of the child's death
- The identification of child protective or other services provided or actions taken regarding the child and his or her family (this includes historical information)
- Information concerning whether the child or the child's family had received assistance, care or services from an LDSS prior to the child's death
- Any action or further investigation taken by OCFS or the LDSS since the death of the child
- As appropriate, recommendations for local or state administrative or policy changes
- Written comments provided by any LDSS referenced in the report. The comments must protect the confidentiality and privacy of the deceased child, the child's family and household members, and the source of any report to the SCR; be relevant to the fatality; and be factually accurate.[2]

The IFCR must **not** include**:**

- Any information that would identify the deceased child, his or her siblings, the parent(s) or other person legally responsible for the child, or any other members of the deceased child's household;
- The identity of the source of a report made to the SCR, if one was made;
- Any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations, or like materials or information not directly related to the cause of the child's death.

b. *Assessment of the investigation*

Important purposes of the child fatality review process are to determine whether the LDSS or VA complied with applicable statutes, regulations, and OCFS policies and consistent with that assessment, to reach conclusions about the adequacy of the actions taken and decisions made regarding the subject child, siblings, and other children residing in the household [SSL §§20(2)(b) and 34(3)(d)].

To make these judgments, the reviewer, either OCFS or the CFRT, refers to relevant statutes, regulations, and OCFS policies and applies them to case facts. The reviewer assesses the adequacy of the actions and decisions by considering them in the context of the facts that were available to the LDSS or voluntary agency when the actions took place and the decisions were made.

[2] OCFS. (2015). "The Inclusion of Local Social Services District Comments in Child Fatality Reports" (15-OCFS-INF-09)

In this manner, the reviewer identifies the LDSS's or VA's case practice strengths and needs. The information in the case record is weighed against standards for good practice, regarding such elements of case practice as:

- Purposeful information gathering;
- Solution focused interviewing;
- Family engagement;
- Quality of case contacts; and
- Collaboration and coordination activities with other professionals.

This assessment of actions and decisions may lead the review team to make relevant recommendations for improvements that fall within the scope of New York State laws, regulations, and OCFS policies. This assessment of case practice strengths and needs is then used to inform the development and implementation of strategies to improve practice.

2. Sharing the Individual Child Fatality Report

a. *Requirements*

While a CFRT may write an IFCR, OCFS has final responsibility for the report and its contents, and only OCFS can issue the report [SSL §§20(5)(c) & 422-b(6)].

LDSS Review Prior to Finalizing the Report

Prior to issuance of a report, OCFS must submit a draft copy of the proposed report to each LDSS referenced in the report for review and comment.[3] A purpose of this sharing is to provide the LDSS the opportunity to correct factual errors or to supply missing information.

In addition, the LDSS may submit comments on the draft report. Any such comments must be submitted within ten days of the receipt of the draft. [SSL §20(5)(c)]. These comments must protect the confidentiality and privacy of the deceased child, the child's family and household members, and the source of any report to the SCR; be relevant to the fatality and pertain to one of the factors that must be addressed in the fatality report; and be factually accurate [SSL §20(5)(b)(vii)]. Comments meeting these requirements must be included by OCFS in the final fatality report.

Distribution of the Final Report

Once the IFCR is final, but no later than six months after the death of the child, OCFS issues the report to the following officials [SSL §20(5)(c)]:

- The LDSS Commissioner of the county where the death occurred;
- The LDSS Commissioner who had care and custody, or custody and guardianship, of the child, if different from the LDSS Commissioner in the county where the child's death occurred;
- The chief executive officer of the county (in New York City, the Mayor of the City of New York) where the child's death occurred;
- Outside of New York City, the chairperson of the local legislative body in the county where the child's death occurred; and

[3] See 15-OCFS-INF-09, *The Inclusion of Local Social Services District Comments in Child Fatality Reports*.

- If the death occurred in New York City, the president of the New York City Council

OCFS must also notify the Temporary President of the State Senate and the Speaker of the State Assembly when it issues an IFCR.

OCFS also shares reports about fatalities that occur in New York City with the Public Advocate for the City of New York.

For reports prepared by a CFRT, OCFS must also forward copies of the report to all other CFRTs established under SSL §422-b, as well as to all citizen review panels established pursuant to SSL §371-b, and to the Governor.

b. *Confidentiality / Release to the Public*

When OCFS receives a request for a specific IFCR to be released to the public, OCFS may release the report if OCFS determines that such disclosure is not contrary to the best interests of the deceased child's surviving siblings or to other children in the deceased child's household [SSL §20(5)(b)].

Such a "best interests" determination must be made when there is either a request for the release of an IFCR or a more general, request for multiple reports that is not child-specific. With each request, OCFS must consider various factors including, but not limited to, the potential adverse effects of disclosure on the surviving siblings or other children in any deceased child's household.[4] A "best interests" determination must also be made before releasing an IFCR prepared by OCFS to members of a CFRT.

These confidentiality protections do not preclude OCFS, acting in its supervisory role, from issuing a separate report and findings to the appropriate LDSS or VA that specifically identifies the pertinent parties.

3. LDSS Program Improvement Plans

a. *Development of an LDSS Program Improvement Plan*

When the review of an investigation of a child fatality finds important statutory or regulatory compliance failures and deficiencies in practice, the LDSS must develop a Program Improvement Plan (PIP) and submit it to its OCFS Regional Office.

OCFS pre-fills a PIP template with the identified deficiencies and the applicable statutory or regulatory citations, and emails the template and any accompanying information to the LDSS. The OCFS Regional Office informs the LDSS of the timeframe for submission of its PIP.

In New York City, staff from the Regional Office and the Administration for Children's Services (ACS) meet within seven days to clarify the issues raised in the report and to offer technical assistance and guidance in developing the plan.

The objective of a PIP is to correct the behaviors and/or conditions that caused the noncompliance issues identified in the Child Fatality Review. The PIP should describe specific corrective strategies, detailing actions and activities that will help the LDSS resolve the identified issue(s). The PIP should indicate how and when those actions and activities

[4] (OCFS, 2008) "*Best Interests Determinations on Fatality Reports*" (08-OCFS-LCM-14)

will occur. The PIP should also describe how the LDSS will demonstrate that the identified noncompliance issues have been corrected.

When applicable, the OCFS Regional Office should initiate discussions with the LDSS about its findings and the need for a PIP as early in the fatality review process as possible. Upon request, the OCFS Regional Office may help the LDSS develop its PIP by:

- Engaging the LDSS's leaders and managers in ongoing discussions about the process for developing, approving, and monitoring the PIP
- Reviewing and providing comments on early drafts of the PIP
- Providing guidance about the types of corrective strategies that have been shown to be successful in correcting the identified noncompliance issues
- Assisting the LDSS to identify existing agency strengths and resources that it can mobilize to meet the PIP's objectives
- Helping the LDSS to determine if technical assistance is needed to implement and complete the PIP
- Identifying and obtaining resources for corrective actions, such as staff training and technical assistance
- Encouraging the LDSS to use, as appropriate, its overall quality assurance process to sustain the improved performance achieved through the PIP

If, after reviewing the PIP, the OCFS Regional Office has concerns that it does not adequately address the identified noncompliance issues and required actions, then Regional Office staff will meet with the LDSS to discuss these concerns and negotiate changes or additions to the PIP.

When the OCFS Regional Office determines that the LDSS's plan is adequate, it issues an approval letter to the LDSS.

In New York City, the OCFS New York City Regional Office also sends a copy of the approval letter to the New York City Citizen Review Panel.

b. *Monitoring LDSS Program Improvement Plans*

The OCFS Regional Office is responsible for monitoring the implementation and completion of PIPs. The OCFS PIP template is the working document for the monitoring process, with the focus on the columns filled out by the LDSS, describing the corrective actions that will be taken and their timeframes.

The LDSS should notify the OCFS Regional Office when it has completed the corrective actions specified in the PIP. If a completion date passes without such notification, the OCFS Regional Office will contact the LDSS to determine whether the plan is being implemented. If a PIP is amended, this should be recorded in the Regional Office's records maintained for PIPs.

The Regional Office determines the effectiveness of the Program Improvement Plan through its ongoing case review process and site visits by the Regional Office liaison. The OCFS Regional Office will indicate in its PIP records when the LDSS has completed all corrective actions.

Chapter 12: **Notifications**

A. Notice of existence of a child protective report – familial setting A-1

B. Notice of existence of a child protective report – out-of-home setting B-1

1. Notifications to persons named in the reports B-1
2. Notifications when a child in foster care is placed out of district B-1

C. Determination notices C-1

1. Investigations – Notice of Indication C-1
2. Investigations – Notice of Unfounding C-1
3. Family Assessment Response – Notice of Case Closing C-2

D. Notification of the removal of a child D-1

E. Other notices to parents / families E-1

1. Notice when CPS is denied access to a child during an investigation E-1
2. Notice regarding the right to refuse services E-1

F. Notifications of a child's death F-1

1. Medical examiner or coroner F-1
2. District Attorney F-1
3. Law enforcement F-1
4. Office of Children and Family Services F-1

G. Notices of certain reports G-1

1. Law enforcement G-1
2. District Attorney G-1
3. Office of Children and Family Services G-1

H. Notification of report amendment or expungement H-1

Chapter 12: **Notifications**

New York State laws and regulations require that specific notifications be provided to certain persons during a child protective investigation or family assessment response [e.g., SSL §424(6)(a); 18 NYCRR 432.2(b)(3)(ii)(f)]. The notifications serve to protect the interests of the child, the family and caregivers, the agency that provides the investigation or alternative response, and other agencies involved with Child Protective Services (CPS).

When the LDSS is aware that the intended recipient of a CPS notification has Limited English Proficiency (LEP), the CPS worker should take reasonable steps to provide the notification in the person's language or, if the notification cannot reasonably be translated into the needed language, make other arrangements (for example, arranging for the provision of an oral translation of the notification) that would enable the person to understand the communication.

The CPS worker may assess a recipient's language needs through a variety of means:

- The SCR may have designated the person's language in CONNECTIONS (CONNX).
- The source or a collateral contact may indicate in conversation with a CPS worker that the person has limited proficiency in English.
- The CPS worker may know from previous contact with the person/family, or from contact during the investigation, that a person has Limited English Proficiency.

Spanish-language versions of many CPS notification letters are provided in CONNX. OCFS also provides translations of CPS notifications on its intranet website in several other languages. Translated notices are available at: http://ocfs.state.nyenet/admin/forms/connections/.This website is available to LDSS staff, but is not accessible to the public.

While CPS workers routinely provide persons with LEP with the translated notices, they must also provide them English language versions of the same notices.

Similarly, if the CPS worker learns that the recipient of a notification is visually impaired, the CPS worker must take appropriate steps established by the local district to enable the recipient to be able to access the contents of the notification.

A. Notice of existence of a child protective report – familial setting

Upon receipt of a report that is assigned to an investigation, CPS must provide a written notice of the existence of the report and of the subject(s)' rights regarding amendment to the subject(s) and any other persons named in the report. This includes any non-subject parent(s), other household members who are person(s) legally responsible for children named in the report, and any other adult named in the report. (Children in the household are also persons named in the report, but children under age 18 are not notified.) [SSL §424(6)(a); 18 NYCRR 432.2(b)(3)(ii)(f)]

A CPS worker must mail or personally deliver the Notice of Existence but in no event later than seven days after receipt of the report by the Statewide Central Register of Child Abuse and Maltreatment (SCR) [18 NYCRR 432.2(b)(3)(ii)(f) & 432.3(j)]. Notice of Existence must be provided for every initial or subsequent report. They are not required if a report is determined to be a duplicate report by the SCR or CPS, or for Additional Information (Add Info) reports.

For reports assigned to the investigation track, each subject and each adult (Other Person Named) in the report, as well as non-subject parents of children named in the report who are not listed in the

report, must receive a separate copy of the notification letter [18 NYCRR 432.2(b)(3)(ii)(f)]. This includes parent substitutes, grandparents, boyfriends or girlfriends who may be considered persons legally responsible for the child, and others named in the report.

When a report is assigned to a Family Assessment Response (FAR), state law requires that the LDSS provide a written notice to each parent, guardian, or other person legally responsible for the child or children participating in the family assessment services case. The notice must explain that it is the intent of CPS to meet the needs of the family without engaging in a traditional investigation and that the persons working with the family are mandated reporters who are required to report any suspected abuse or maltreatment [SSL §427-a(4)(d)(i); 18 NYCRR 432.13(e)(2)(i)]. While all parents, including non-custodial and out-of-household parents, are entitled to receive this notification of the existence of a FAR report, there is no legal requirement to further involve all of them in the FAR intervention.

If a case assigned to FAR is open, and a subsequent report is received that is consolidated with the open FAR case, the requirement to provide written notification is waived; CPS must provide verbal notification of the new report to every parent, guardian or other person legally responsible for the child or children named in the report.

When a notification letter is generated in CONNX, the system pre-fills the address and salutation lines with the name and address information maintained in CONNX. It is therefore important that CPS workers update the demographics of each person in the case in CONNX.

Whenever a CPS worker identifies someone during the investigation who satisfies the definition of “subject of the report” or “other person named in the report,” but who was not named in the report received from the SCR, the LDSS must add that person to CONNX and provide that person with the appropriate Notice of Existence letter.

The date and method of delivery of the notification letter(s) should be recorded in progress notes [18 NYCRR 428.5; 432.13(e)(5)].

Hand delivery of the notification letter is preferable to mailing the letter. By handing a notification letter to the subject and to other persons named in the report, the caseworker can discuss the contents of the letter and answer any questions they may have about it. E-mailing or faxing notification letters is not permitted due to confidentiality and security issues. Where a report is assigned to FAR, discussing the contents of the letter with the subjects/parents is an essential part of the FAR practice.

Adding non-subject parents and others

CPS workers should add non-subject parents and others who were not noted in the original report to the case record so letters can be sent to them. CONNX generates separate letters for each person listed.

Notification letters

Notice of Existence letters and Notice of Indication letters are mailed out by CPS and these letters should be printed on LDSS agency letterhead. Also if a LDSS chooses to use their own notification letters, these letters must contain the language specified and required by OCFS.

Non-CONNX letters

If a letter is generated outside of the CONNX system, for example a translated letter, it is still necessary to generate a letter in CONNX. This is an important step because doing so will add an event in CONNX that the letter was actually generated, which is particularly important should the subject request an administrative review. The SCR will review CONNX event list to see if the subject’s request for an administrative review is timely.

B. Notice of existence of a child protective report – out-of-home setting

An out-of-home setting refers to a setting that is not the child's familial home and that requires state or local government approval and is subject to state laws, regulation and oversight. For the purpose of this chapter out-of-home settings, refer to foster care and child care. (See **Chapter 7, Investigations** *in foster homes and child day care programs.)*

1. Notifications to persons named in the reports

The parents or guardians of any child alleged to have been abused or maltreated in a foster boarding home or a day care setting must be notified of the existence of the report. The Notice of Existence (Day Care/Foster Care) – Parent letter sent to them must contain language specified by the Office of Children and Family Services (OCFS), which provides this information. (See **Chapter 14,** *Appendices.*)

In addition, the CPS must provide a Notice of Existence (Day Care/Foster Care) – Alleged Subject letter to the foster parent or day care provider named as the subject of the report. This letter contains a notification of the report and information regarding the subject's right to appeal. This letter must also use the specific language specified by OCFS.

There is no provision for CPS to send a Notice of Existence letter to the director of a day care center or a school-age child care program or to the owner of a group family or family day care program when an employee of that program has been named as the subject of a report. The CPS caseworker may verbally share the existence of the report with the day care director/owner as part of their investigation but no Notice of Existence letter will be sent to the director/owner.

A CPS worker should record the date and method of delivery of the notification letter(s) in the case progress notes.

2. Notifications when a child in foster care is placed out of district

When a child in foster care has been placed in a foster boarding home located outside the social services district that has legal custody of the child, the LDSS responsible for conducting the investigation must notify the LDSS with legal custody that the child has been named in a report of abuse or maltreatment. OCFS has a model letter that may be used for this purpose "Notice of Existence of a Report." The model letter can be found in the appendix of this manual (see **Chapter 14,** *Appendices*). In addition, the investigating CPS must provide notification of the report to the LDSS or voluntary agency (VA) that certified or approved the foster home.[1]

The CPS with primary jurisdiction for investigation the report must notify the LDSS with legal custody of the child(ren) in foster care named in the CPS report, and the LDSS or VA that certified or approved the foster home, and the applicable OCFS Regional Office, of the results of the investigation (whether the report was indicated or unfounded) at its conclusion. [SSL 424.6(b)]

[1] "Requirements Relating to CPS Reports Involving Foster Parents" (16-OCFS-ADM-13)

C. Determination notices

At the conclusion of an investigation, each subject and adult other person(s) named in the report must be notified of the determination of the investigation, that is, whether the report has been indicated or unfounded. If the report is indicated, the notification is sent by CPS. If the report is unfounded, the notification is sent by the SCR [18 NYCRR 432.3(k)].

1. Investigations – Notice of Indication

If the report is indicated, the LDSS responsible for the investigation must mail or deliver a written Notice of Indication no later than seven days after the "indicated" determination. Notice of Indication letters are generated in CONNX. It is important that a CPS worker document in the progress notes the manner in which the notice was delivered to the subject and the date the subject received the notice, if known. If the notice is delivered via certified mail, CPS should keep the receipt on file, along with any other hard-copy documents in the report record.

Sample Notice of Indication letters:

- Notice of Indication (Familial)- Subject
- Notice of Indication (Familial)- Other Person Named in the Report
- Notice of Indication (Day Care/Foster Care) – Subject
- Notice of Indication (Day Care/Foster Care) – Other Person Named in the Report
- Notice of Indication (Day Care/Foster Care) – Parent

Spanish versions of each of these notification letters are available in CONNX, and CPS workers should use a Spanish version whenever the intended recipient of the notification is Spanish speaking and has Limited English Proficiency. OCFS also provides translations of the Notice of Indication in several other languages, which are accessible on its intranet website, at http://ocfs.state.nyenet/admin/forms/connections/. If the recipient of the report does not speak English or any of the languages for which OCFS has translations, the LDSS must employ some means of providing a translated Notice of Indication to the subject. This is especially important as it affects the subject of the report.

When a CPS worker sends a translated version of the Notice of Indication, the CPS worker should also provide the person with an English version of the same notice.

2. Investigations – Notice of Unfounding

If a report is unfounded, the SCR notifies the subject and any adult other persons named in the report that the report was unfounded. The SCR mails a computer-generated Notice of Unfounding letter to each of these persons 14 days after the report closes. Married parents or guardians may receive one letter jointly addressed.

However, if any of the recipients of these letters has LEP, the CPS worker should send, where available, a second, translated version of the Notice of Unfounding letter to that person. Translated versions of Notice of Unfounding letters are available on the OCFS intranet in several of the most commonly spoken languages in the state: http://ocfs.state.nyenet/admin/forms/connections/. Where a translated version is not available, the LDSS should try to inform the person with LEP about the contents of the letter through some other means that enables the person to understand the letter, such as the use of an interpreter or translator.

3. Family Assessment Response – Notice of Case Closing

When CPS addresses a Family Assessment Response (FAR) report, it does not make a determination of indicated or unfounded. Nevertheless, no more than seven days after closing a FAR case, CPS must notify the family, including all subject(s) of the report, that the case has been closed. The notification must be provided in writing and, if feasible, there should also be a verbal discussion about it with the family. FAR closing letters can be generated in CONNX, but LDSS may use their own letters. The notice must inform the family and subject(s) that the FAR report is sealed and that the records will be maintained for 10 years after the report was received at the SCR. Notices must also inform the subject(s) of the report about the applicable confidentiality provisions and of their right to access the records [18 NYCRR 432.13(e)(2)(viii)].

D. Notification of the removal of a child

When a child is removed from his or her home pursuant to FCA §1021 (removal with consent), §1022 (temporary removal by court order prior to filing a petition), or §1024 (emergency removal), the CPS worker must provide the parent or the person legally responsible for the care of the child (PLR), with a written notice that **contains the following information**:

- The right of the parent or PLR to apply to the Family Court for the return of the child, pursuant to FCA §1028
- The right to be represented by counsel and the procedures for those who are indigent to obtain counsel (required for only 1021 and 1024 removals)
- The name, title, organization, address and telephone number of the person removing the child
- The name, address and telephone number of the authorized agency[2] to which the child will be taken, if known
- The telephone number of the person to be contacted for visits with the child [FCA §§1021, 1022(d) & 1024(b)(iii)]

When the removal is made on an emergency basis and without the consent of the parent or PLR, the written notice must also inform the parent or PLR of their intent to apply for a court order or orders, the date and the time that the application will be made, and the address of the court where the application will be made [FCA §1024(b)(iii)].

The Office of Court Administration (OCA) has promulgated forms that provide the required notices for removals. For removals pursuant to FCA §1021 and §1024, the LDSS must use Form 10-1a: "Child Protective-Notice of Temporary Removal of Child and Right to Hearing." For removals pursuant to FCA §1022, the LDSS must use Form 10-1: "Child Protective—Order Directing Temporary Removal of Child Before Filing of Petition."

The applicable notice must be completed by the LDSS and hand-delivered to the parent or PLR at the child's residence. If such person is not present at the residence at the time of removal, a copy of the notice must be affixed to the door of the residence and a copy mailed within 24 hours of the removal to the last known address of the parent or PLR. If the place of removal is not the child's residence, a copy of the notice must be hand delivered to the parent or PLR. If the parent or PLR is not found, the notice must be affixed to the door of the child's residence, and mailed within 24 hours of the removal of the child to the parent(s) or PLR(s), at his or her last known address [FCA §§1022(d) & 1024(b)(iii)].

If the removal is an emergency removal under FCA §1024, the CPS worker must also file an affidavit with the court clerk within 24 hours (not including weekends and holidays) of providing the required notification, attesting to the fact that the notification was served [FCA §1024(b)(iii)].

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[2] For this purpose, an "authorized agency" is the LDSS that placed the child as well as any voluntary agency in which the child is placed.

E. Other notices to parents / families

1. Notice when CPS is denied access to a child during an investigation

If, when investigating a report of suspected abuse or maltreatment, the CPS worker is unable to locate a child, is denied access to the home, or is denied access to the child named in the report or to any children in the household, and the CPS worker has cause to believe that a child's life or health may be in danger, that worker must immediately advise the parent, PLR, or adult with whom the child resides that:

When denied sufficient access to the child or other children in the home, the CPS worker may contact the Family Court to seek an immediate order to gain access to the home and/or the child or children without further notice, and

That while the request is being made to the family court, law enforcement may be contacted and, if contacted, will respond and remain where the child or children are believed to be present [SSL §424(6-a)].

Prior notification to the parent or other adult of this possibility is a requirement for obtaining the court order to gain access in this situation. The application for such a court order requires the CPS worker to specify the date that the parent was advised. This notification may be made verbally or in written form.

2. Notice regarding the right to refuse services

When a child abuse or maltreatment report is indicated, and after an assessment of safety and risk, it is the responsibility of the CPS worker to offer appropriate services to the child and/or the family. When offering these services to the family, the CPS worker must inform the family that it cannot be compelled to accept the services offered. Child protective staff should also inform the family that the CPS may petition the Family Court for a determination that a child is in need of care and protection and that services are necessary. This notification may be made verbally [SSL §424(10)].

F. Notifications of a child's death

1. Medical examiner or coroner

Any mandated reporter, including CPS, who has reasonable cause to suspect that a child has died as a result of child abuse or maltreatment must report that fact to the appropriate medical examiner or coroner. See **Chapter 2**, *Reporters.*

The medical examiner or coroner must accept the report for investigation and must issue a preliminary written report of his or her findings within 60 days of the date of death, absent extraordinary circumstances. The medical examiner or coroner must send his or her final written report promptly, absent extraordinary circumstances, to the police, the appropriate district attorney, CPS, OCFS, and the hospital (when the hospital is the institution making the report) [SSL §418; 18 NYCRR 432.3(e)].

CPS must document the findings of the report of the medical examiner or coroner in CONNX.

2. District Attorney

CPS must notify the appropriate District Attorney when it receives a report alleging abuse or maltreatment that involves the death of a child. The report must be made by telephone and a copy of the report must be forwarded immediately to the District Attorney. See also **Chapter 6, Section L.2**, *Communicating with district attorneys and police agencies* and **Chapter 6, Section K,** *Child fatalities.* [SSL §424(4); 18 NYCRR 432.3(d)].

3. Law enforcement

CPS must give telephone notice and immediately forward to law enforcement a copy of any report from the SCR that involves the death of a child [SSL §424(5-a)].

4. Office of Children and Family Services

An LDSS, including CPS, must notify its applicable OCFS regional Office within 24 hours whenever it becomes aware of the death of a child, in any of these circumstances:

- The death allegedly occurred as the result of child abuse or maltreatment (the CPS received a report from the SCR)
- The child was in foster care at the time of the death [18 NYCRR 441.7(c)(1)]
- The child was in an open protective services case
- The child was in an open preventive services case

The LDSS must follow up the telephone call by submitting Form OCFS-7065, "Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Deaths of Children in Open Child Protective or Preventive Cases," to OCFS.[3] This form is on the OCFS website at http://ocfs.ny.gov/main/documents/.

[3] "Notification to OCFS of the Death of Children in Open Child Protective or Preventive Services Cases" (06-OCFS-LCM-13).

G. Notices of certain reports

1. Law enforcement

CPS must give telephone notice and immediately forward to the appropriate local law enforcement entity a copy of any report it receives from the SCR that contains allegations involving:

- Sexual abuse of a child, or
- Physical injury that meets the definition of abuse, as described in FCA §1012(e)(i) [SSL §424(5-a)]

However, such reporting is not required when the LDSS and law enforcement have an OCFS-approved protocol on joint investigations that states otherwise.

In addition, unless an OCFS-approved protocol between the LDSS and law enforcement states otherwise, the LDSS must make a timely assessment to determine whether it is necessary to give notice to the appropriate local law enforcement entity of any report of suspected maltreatment that:

- Alleges physical harm, and
- Source of the report is a mandated reporter, and
- There have been two other indicated or pending reports within the last six (6) months involving the same child, the named child's siblings, other children in the household, or the subject of the report [SSL §424(5-b)].

2. District Attorney

CPS must provide the District Attorney's office with immediate telephone notice and copies of all reports if the District Attorney's office has submitted a prior request in writing for such notice [SSL §424(4); 18 NYCRR 432.3(g)]. The District Attorney's office must specify the kinds of allegations about which it wishes to be given notice and copies, and the request must include copies of the relevant provisions of the law. CPS may *not* notify the District Attorney of any reports that are assigned to FAR [SSL §427-a(5)(d)].

3. Office of Children and Family Services

An LDSS should notify its applicable OCFS Regional Office within 24 hours if it becomes aware of a serious injury (i.e., an injury which requires the services of a physician and, in the opinion of the physician, may cause death, serious disability or disfigurement) or accident involving a child who is in foster care.

Within 72 hours of the serious injury or accident the LDSS should follow up the telephone call by submitting Form OCFS-7065 (3/2008), "Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Deaths of Children in Open Child Protective or Preventive Cases," to the OCFS Regional Office[4]. This form is on the OCFS website at http://ocfs.ny.gov/main/documents/.

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[4] Ibid.

H. Notification of report amendment or expungement

Whenever a closed child abuse or maltreatment report is amended or expunged, the following individuals and/or entities must be notified by OCFS [SSL §422(9)]:

- The subject of the report
- Any other person named in the report
- The applicable investigative agency (i.e., CPS)
- If the child was placed in an out-of-home setting at the time of the report:
  - the local social services commissioner or school district placing the child
  - the state agency with jurisdiction over the facility or program where the child was placed
  - the director or operator of the residential care facility or program
  - any attorney for the child appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement

Chapter 13: **Confidentiality and legal sealing**

A. Confidentiality of CPS records A-1

1. Requests for information A-1
2. Access to CPS records A-2
3. Releasing information to a criminal justice agency A-2
4. Releasing information to other agencies A-3
5. Releasing information to the public A-4

B. Legal sealing of unfounded CPS records B-1

Chapter 13: **Confidentiality and legal sealing**

A. Confidentiality of CPS records

All information maintained by the New York State Office of Children and Family Services (OCFS), local social services districts (LDSSs), and other authorized agencies must adhere to federal and state statutes, and regulations protecting confidentiality. Every staff person with these agencies and programs must comply with the requirements to protect and maintain the confidentiality of information related to the children and families served. Strict confidentiality rules apply whether information is obtained through face-to-face contact, a telephone call, a letter, or accessing a computer database.

All information collected via CPS work is confidential [18 NYCRR 432.7 and SSL §§422(4)(A) & 427-a(5)(d)]. In performing statutory and regulatory duties, such as conducting a CPS investigation, a Family Assessment Response (FAR), or maintaining the records of the Statewide Central Register of Child Abuse and Maltreatment (SCR), OCFS and LDSSs collect and maintain personal information about children and families. The collection, maintenance, use, and dissemination of personal information can directly affect an individual's right to privacy, and federal and state statutes authorize the release of certain information only under specific circumstances, as set forth in law.

1. Requests for information

When OCFS or an LDSS receives a request for information, they must determine whether the information requested may be released to that entity or individual. Each LDSS and voluntary authorized agency (VA) is responsible for informing all staff, both employees and volunteers, of their legal responsibilities regarding confidentiality, disclosure of information, and privacy for the children and families they serve.

Unauthorized release of child protective information is a breach of confidentiality, and state law sets forth criminal penalties for the willfully permitting or encouraging the release of confidential CPS information to any person or agency not authorized to have access to the information [SSL §422(12)]. All OCFS, LDSS, and VA staff must respect and safeguard confidential information.

Information contained in CPS records is confidential and may be disclosed only when authorized by law. Confidential CPS information includes all reports registered by the SCR. It also includes all information obtained, reports written, and photographs taken related to a CPS report in the possession of OCFS or the LDSS. Reports and related information are available only to the entities and under the circumstances provided by law [SSL §§422(4)(A), 422(5)(a) & 427-a(5)(d)].

CONNECTIONS (CONNX) includes information about individuals associated with child protective cases, Family Services Intakes, Family Services Stages, as well as foster care providers, state and LDSS staff, and VA personnel. CPS may need to access information regarding some of these individuals by conducting CONNX person searches. While CPS has access to information via the CONNX person search tool for purposes of conducting an investigation or FAR, CPS is not authorized to conduct a clearance (Database Check) on an individual. A Database Check can be conducted only by the SCR. Please see **Chapter 3,** *Statewide Central Register Responsibilities*, for more information on database checks.

2. Access to CPS records

While the general rule is that CPS records are confidential, Section 422(4)(A) of the SSL sets forth specific exceptions to the confidentiality standard. These exceptions cover individuals and/or agencies who may be entitled to confidential information related to indicated reports or reports currently under investigation, and the statute describes the circumstances under which different persons and agencies are entitled to confidential information. There are separate confidentiality exceptions for unfounded reports (Section 422(5) of the SSL) and FAR reports (Section 427-a(5)(d) of the SSL).

The most common requests for CPS information come from the following entities:

- A person who is the subject of the report or other persons named in the report
- A criminal justice agency (see **Section 3,** *Releasing information to a criminal justice agency***,** below)
- A court, upon a finding that the information in the record is necessary for the determination of an issue before the court
- A probation service
- Members of a local or regional fatality review team approved by OCFS
- A CPS in another state

For local procedures on releasing information, please see your county attorney's office or contact the OCFS legal division for more assistance.

3. Releasing information to a criminal justice agency

A criminal justice agency is defined as "…a district attorney, an assistant district attorney or an investigator employed in the office of a district attorney; a sworn officer of the division of state police, of the regional state park police, of a county department of parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer" [SSL §422(4)(A)(I)].

CPS frequently works with law enforcement agencies and information can be provided to a criminal justice agency in the following circumstances:

- A criminal justice agency requests the information stating that the information is necessary to conduct a criminal investigation or prosecution of a person; that there is reasonable cause to believe the person is the subject of a report; and that it is reasonable to believe that the information may be related to the investigation and/or prosecution [SSL §422(4)(A)(I)(i)].
- A criminal justice agency requests the information stating that it is conducting an investigation of a missing child, and that:
  - It has reason to suspect that a parent, guardian or other person legally responsible for the child is or may be the subject of a report, or that the child or the child's sibling is or may be named in a report, and
  - Any such information is or may be needed for the investigation of the missing child [SSL §422(4)(A)(I)(ii)].[1]

[1] "Sharing Child Protective Services Information with Law Enforcement When a Child Is Missing" (16-OCFS-ADM-07)

- A criminal justice agency requests the information while acting in its capacity as a member of a multi-disciplinary team (MDT) established by the LDSS pursuant to Section 423(6) of the SSL [SSL §422(4)(A)(x)].
- A criminal justice agency requests the information while acting in its capacity as a member of an OCFS-approved local child fatality review team (CFRT) and the information is necessary for the preparation of a fatality report pursuant to Sections 20(5)(d) and 422-b(2) of the SSL [SSL §422(4)(A)(w)].

In most cases, an LDSS may provide information from CPS reports to a criminal justice agency only when a subject has been indicated or when the report is under investigation at the time that access to the information is sought. However, a criminal justice agency may have access to unfounded report information in three situations:

- When the criminal justice agency is acting in its capacity as a member of an MDT and is involved in the MDT investigation of a subsequent report of suspected abuse or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in an unfounded report [SSL §422(5)(a)(iii)].
- When the criminal justice agency verifies that the unfounded report information is necessary to investigate or prosecute an alleged intentional false report to the SCR, pursuant to Section 240.50(4) of the Penal Law [SSL §422(5)(a)(v)].
- When the criminal justice agency is acting in its capacity as a member of an OCFS-approved CFRT and the unfounded report information is necessary for the preparation of a fatality report pursuant to Sections 20(5)(d) and 422-b (2) of the SSL [SSL §422(5)(a)(ii)].

An LDSS must not share information with a criminal justice agency from the record of any CPS report that was assigned to FAR.

In addition, before providing confidential information to a criminal justice agency or any other entity, LDSSs must be certain that the requestor is actually an individual authorized to have access to that information or is making a request on behalf of an agency authorized to have access to that information.

4. Releasing information to other agencies

CPS and authorized agencies providing preventive, foster care, and/or adoption services share responsibility for assisting families to succeed in meeting the needs of their children. Staff members' ability to access information relevant to the families they are serving provides significant benefits to all staff as well as to children and families.

When an LDSS refers a child or family to a VA for foster care or adoption services, to a preventive services agency, or when a child or a child's family has referred themselves for such services at the request of CPS or the LDSS, the agency providing such services is authorized to receive reports or other necessary information from "under investigation" or "indicated" reports of abuse or maltreatment. Persons or agencies given access to information may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family [SSL §422(4)(A)(o)]. Other than the exchange of information to facilitate the provision or coordination of services, service providers are prohibited from redisclosing CPS information.

In addition, VAs providing foster care for a child named in a report, whether "under investigation" or "indicated," are authorized access to CPS information during the time the VA is responsible for the care of the child [SSL §422(4)(A)(c)]. VA staff may also contact the CPS worker to discuss the safety concerns in the case, allegations in the report, and other critical issues that the VA

worker needs to know to provide ongoing services and support to the family and further protection of the child(ren).

CPS is required to ascertain whether the child named in a CPS report or any other child in the home is in the care, custody, or guardianship of an authorized agency (i.e., an LDSS other than the LDSS of which the CPS is a part and/or a VA) and, if so, to provide such authorized agency or agencies with a copy of the report of suspected abuse or maltreatment as soon as possible. In addition, CPS must also inform the other LDSS and/or VA of the outcome of the CPS investigation, specifically whether the report was indicated or unfounded [SSL §424(6)(b)].

Authorized voluntary and preventive services agencies that obtain confidential CPS information are prohibited from redisclosing such information, except as authorized by law. When an authorized voluntary agency or a preventive services agency is advised by CPS of the existence of a report of suspected child abuse or maltreatment, such agency must not notify the family or child of the existence of the report. Such disclosure is not authorized by law and may jeopardize the investigation and the efforts to prevent further abuse or maltreatment.

If a parent or child asks the authorized voluntary agency or preventive services agency to provide information that the agency has received from CPS, the agency should refer the parent or child to the applicable CPS to request access to the information.

5. Releasing information to the public

The OCFS Commissioner and LDSS commissioners may disclose certain CPS information to the general public under limited circumstances [SSL §422-a(1)]. (In this context, disclosure to the public means release to any person or agency not otherwise entitled to access to SCR/CPS information pursuant to Sections 422(4)(A), 422(5)(a) or 427-a(5)(d) of the SSL, as discussed above.) They must first determine that the disclosure is not contrary to the best interests of the child, the child's siblings, or any other children in the household [SSL §422-a(1)]. In making such determination, the OCFS or LDSS commissioner must consider the privacy interests of the child(ren) and family, and the effects any disclosure may have on efforts to reunite and provide services to the family [SSL §422-a(5)]. If that determination is made, and if any one of the following factors is present, OCFS or the LDSS Commissioner may release the information. The factors are:

The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the SCR.

The investigation of the abuse or maltreatment of the child by the local CPS or the provision of services by CPS has been publicly disclosed in a report required to be disclosed in the course of their official duties by a law enforcement agency or official, a district attorney, any other State or local investigative agency or official, or by a judge of the unified court system.

There has been a prior knowing, voluntary, public disclosure by an individual concerning a report of child abuse or maltreatment in which such individual is named as the subject of the report.

The child named in the report has died or the report involves the near fatality of a child. "Near fatality" means an act that results in the child being placed, in serious or critical condition, as certified by a physician [SSL §422-a(1)].

If OCFS or the LDSS determines that CPS information may be released, the information that may be released is limited, based on the status of the investigation.

If the request for public disclosure is made while the report is under investigation, the only information that may be disclosed is a statement that a report is "under investigation" [SSL §422-a(3)(a)].

If there was a prior request for public disclosure while the report was under investigation and the report is unfounded, the only information that may be released is a statement that "the investigation has been completed, and the report has been unfounded" [SSL §422-a(3)(b)]. If no such prior request was made, the fact that a report was unfounded may not be released, except in connection with a subsequent indicated report, as discussed below.

If the report has been indicated, the information that may be released is limited to:

- The name(s) of the abused/maltreated child(ren)
- That the report was indicated, and the basis for that determination
- Identification of CPS and other services provided to the child(ren) named in the report and the family
- Whether any SCR report concerning the child(ren) named in the report has been indicated
- Any actions taken by CPS and the LDSS in response to the report at issue and previous CPS reports, including the dates of such reports (including unfounded reports)
- Whether the child(ren) or family received care or services from the LDSS prior to each SCR report involving the child(ren)
- Any extraordinary or pertinent information concerning the circumstances of the abuse or maltreatment and the CPS investigation, where the OCFS or LDSS commissioner determines that such disclosure is consistent with the public interest [SSL §422-a(2) & (3)(c)].

However, no information may be released that would identify the source of the report, or the name(s) of the abused or maltreated child's siblings, parent or other person legally responsible for the child, or other members of the child's household, other than the subject(s) of the report [SSL §422-a(4)]. Further, the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations, or similar materials (including the reports, evaluations or other materials themselves) pertaining to the child(ren) or family may not be released except as it applies directly to the cause of the abuse or maltreatment. The LDSS commissioner must consult with the local director of mental hygiene prior to authorizing the release of any psychological, psychiatric or therapeutic reports, evaluations, or similar materials [SSL §422-a (7)].

There is no authority to publicly disclose the existence of a FAR report, or any information from such a report.

Attorneys for the LDSS or attorneys for OCFS should be consulted prior to the release of any information to the public. In addition, where information will be disclosed, the LDSS commissioner must notify in writing the chief executive officer of the county in which the abuse/maltreatment occurred setting forth the basis for the determination to disclose the CPS information [SSL §422-a(6)].

B. Legal sealing of unfounded CPS records

Before February 12, 1996, when CPS determined there was no credible evidence to substantiated allegations in a CPS report, the report was expunged. Unfounded CPS reports must be legally sealed and remain on file for 10 years from the date the oral report was received by the SCR. Legally sealed unfounded reports are expunged 10 years after the receipt of the report [SSL §422(5)(a) & (b)]. Please see **Chapter 3,** *Statewide Central Register Responsibilities***,** for information on the early expungement of unfounded reports.

Unfounded reports may only be unsealed and made available to [SSL §422(5)(a)]:

- OCFS for the purpose of supervising an LDSS
- OCFS and local or regional fatality review team members for the purpose of preparing a fatality report
- CPS, OCFS, or all members of a local or regional multidisciplinary investigative team or the Justice Center for the Protection of People with Special Needs when investigating a subsequent report of suspected abuse, neglect or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report
- The subject of the report
- A district attorney, an assistant district attorney, an investigator employed in the Office of a District Attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of an alleged intentional false report to the SCR, which is a violation of Penal Law 240.50(4)(a).

Chapter 14: **Appendices**

A. Forms (non-CONNECTIONS) A-1

1. New York State Unified Court System (UCS) Family Court: Child Protective Forms 1
2. New York State application for certain benefits and services (LDSS-2921 Statewide, [Rev. 7/16]) A-1
3. Plan of Safe Care (NYS OCFS Form-2196) A-1

B. Model letters B-1

1. Sharing of confidential client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA) B-1
2. Model letter – consent for temporary placement of child(ren) in foster care (pursuant to FCA §1021) B-3
3. Intent to ask Family Court for a temporary removal (per FCA §1023) B-4
4. Mandatory reporter consent to release identifying information B-5
5. Model notice of existence of a report (sent by a custodial agency where children are in foster care in a different social services district) B-6
6. Relative model notification letter B-7
7. Parent of sibling (model) notification letter B-9
8. Non-relative notification letter B-10

C. Alternative notice of existence of report letters C-1

D. Notice of child custody proceeding for Native American child D-1

E. Definitions of allegations related to child abuse and maltreatment E-1

1. Fractures E-1
2. Internal injuries E-2
3. Lacerations / Bruises / Welts E-3
4. Swelling / Dislocations / Sprains E-4
5. Choking / Twisting / Shaking E-5
6. Burns / Scalding E-5
7. Poisoning / Noxious substances E-6
8. Excessive corporal punishment E-7
9. Parent's drug / Alcohol misuse E-7
10. Child's drug / Alcohol use E-8

11. Lack of medical care / Medical neglect E-9
12. Educational neglect.....E-10
13. Emotional neglect E-12
14. Sexual abuse E-13
15. Allowing sex abuse to occur.....E-25
16. Malnutrition / Failure-to-thrive E-26
17. Inadequate food / clothing / shelter E-28
18. Inadequate guardianship E-28
19. Lack of supervision E-29
20. Abandonment E-30
21. Dead on arrival (DOA) / Fatality E-31
22. Other 31

F. Standards of evidence for each child protective process stage F-1

G. Criminal justice system..... G-1

1. Types of crimes G-1
2. Specific crimes relating to child abuse and maltreatment cases..... G-1
3. Steps in the Criminal Justice process G-1

H. Title 6 of Article 6 of the Social Services Law H-1

I. Article 10 of the Family Court Act I-1

J. New York State regulations regarding child abuse and maltreatment: Part 432 - Codes Rules and Regulations J-1

K. Model memorandum of understanding..... K-1

1. Roles of and responsibilities of child protective services and the district attorney in investigations of child abuse and maltreatment..... K-1
2. Appointment of liaisons..... K-2
3. Referral of reports of suspected child abuse and maltreatment..... K-3
4. Identification and notification of law enforcement agencies..... K-4
5. Procedures for communication during joint CPS / law enforcement investigations of child abuse and maltreatment K-4

L. Child Fatality Investigations L-1

1. Fatality report checklists L-1

a. SCR.....L-1

b. Non-SCR *L-1*
2. SCR reported fatality checklist L-2
3. Non-SCR reported fatality checklist L-5
4. Investigating sleep related fatality and injury CPS reports L-8
a. Some recommended steps for obtaining information *L-8*
b. Important information to obtain *L-9*
5. Making the determination L-10
a. Bed sharing *L-11*
b. Unattended sleeping infant *L-13*
M. Kinship Care M-1
N. Documentation guidelines for Family Assessment Response (FAR) cases N-1
1. Report received N-1
2. 24-hour assessment of safety N-1
3. Initial contact with the family N-1
4. Description of FAR, notification to the family, and agreement to participate N-2
5. 7-day safety assessment N-2
6. *Family-Led* assessment N-3
7. Engagement N-3
8. Solution focused practice N-4
9. Safety and Risk N-4
10. Family Led Assessment Guide (FLAG) N-5
11. Non-custodial or absent parent N-5
12. Collateral contacts N-6
13. Cultural competence N-6
14. Supervision N-6
15. Transition / Closing N-6

A. Forms (non-CONNECTIONS)

1. New York State Unified Court System (UCS) Family Court: Child Protective Forms

Information regarding the OCA CPS forms can be found electronically through the following link: http://www.nycourts.gov/forms/familycourt/childprotective.shtml

2. New York State application for certain benefits and services (LDSS-2921 Statewide, [Rev. 7/16])

This is the common application for the following services:

- Public Assistance
- Child Care in lieu of Public Assistance
- Supplemental Nutrition Assistance Program
- Medicaid and Supplemental Nutrition Assistance Program
- Medicaid and Public Assistance
- Services, including Foster Care
- Child Care Assistance
- Emergency Assistance Only

3. Plan of Safe Care (NYS OCFS Form-2196)

See next page for *sample* of this form. Follow instructions below to download a fillable Word form or click this link, https://ocfs.ny.gov/main/Forms/Foster_Care/OCFS-2196.docx

This form and all other OCFS forms can be found online at https://ocfs.ny.gov/main/documents/forms_keyword.asp. Type the form number or keyword nto the search box provided on the forms page.

OCFS-2196 (05/2018)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

PLAN OF SAFE CARE

Name of infant: _____ DOB: ___/___/___

Admission date: ___/___/___ Discharge date: ___/___/___

Individual developing POSC:* _____ Individual monitoring POSC:* _____

Phone: ( ) _____ Phone: ( ) _____

Email: _____ Email: _____

Household Members and Affected Family or Caregivers of the Infant:

Name	Age	Relationship to infant	Name	Age	Relationship to infant

Post-Discharge Family Strengths and Goals: (e.g., breastfeeding, housing, smoking cessation, parenting support, recovery)

Identified Supports: (e.g., stable living environment, family and friends, employment, etc.)

Safety and Protective Factors Present: (e.g., parental resilience, social connectedness, knowledge of parenting and child development, social and emotional competence of children, etc.)

Family Is Currently Involved in the Following Services:

Service	Organization	Contact person/Phone/Email

New Family Services Referred or Recommended:

Service (indicate referred or recommended)	Organization	Contact person/Phone/Email

**Plan of Safe Care (POSC)*

OCFS-2196 (05/2018)

Comments:

Signature of parent /caregiver: _____

Date: ____/____/_____ Print name: _____

Signature of staff: _____

Date: ____/____/_____ Print name: _____

Review by (Date): ____/____/_____

B. Model letters

OCFS creates model letters that provide suggested language for districts and voluntary agencies to use for specified purposes. Districts and VAs should place model letters on agency letterhead and may modify language in the model letter as appropriate.

1. Sharing of confidential client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA)

Some LDSSs have sought clarification of permissible means of sharing client identifiable CPS information with PSA. SSL §422(4)(A)(o) permits a CPS or an LDSS to provide CPS information to a provider or coordinator of services to which the CPS or LDSS has referred a child named in a CPS report or the child's family, or to whom the child or the child's family has referred themselves at the request of CPS or the LDSS, where the child has been reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR). The statute authorizes CPS to provide reports or other information necessary to enable the provider or coordinator of services to establish and implement a services plan for the child or family, to monitor the provision or coordination of services, or to directly provide services to the child or family. Such disclosure may not include information that would identify the source of the report, absent the written consent of the source. CPS information received by the provider or coordinator of services is also subject to limitations on redisclosure, as set forth in SSL §422(4)(A). A PSA unit of an LDSS is considered to be a permissible provider or coordinator of services to which CPS may refer a family involved in a CPS case that is pending determination or that is an indicated report.

There is no authority in SSL § 422(4)(A)(o) for the disclosure to providers or coordinators of services of CPS information from an unfounded report of child abuse or maltreatment.

The "Authorization for Information" model letter can be found as an attachment to 12-OCFS-INF-01 Sharing of Confidential Client-identifiable Information Between Child Protective Services (CPS) and Protective Services for Adults (PSA).

Sample letter of authorization

Authorization for Information

I, _____, currently residing at _____, hereby authorize the New York Statewide Central Register of Child Abuse and Maltreatment to furnish all information which may be contained within the New York Statewide Central Register of Child Abuse and Maltreatment to _____ affiliated with _____ (agency), on my behalf in accordance with the Child Protective Services Act of 1973.

The names and birth dates of the children belonging to the individual listed on the first line of this form as well as previous addresses of this individual are necessary to conduct a thorough and accurate search of the Statewide Central Register database. Please furnish this information below:

Names and birth dates of children:

_____

_____

Previous addresses starting with most recent:

_____

_____

_____

Signature _____

On this _____ day of _____, 20___, before me personally came _____ (individual) to me known and known to be the same person described in and who executed the within statement, and he/she duly acknowledged to me that he/she executed the same.

_____ Notary Public

2. Model letter – consent for temporary placement of child(ren) in foster care (pursuant to FCA §1021)

This letter is used for the parent(s) or legal guardian(s) to give written consent to have the child(ren) temporarily removed from the home as per the FCA §1021 for details

Sample letter

I (We) reside at _____.

I (We) am (are) the _____ of the following named child (children).

NAME	BIRTHDATE
_____	_____
_____	_____
_____	_____
_____	_____

I (We) hereby consent to the temporary placement of my (our) child (children) with the Commissioner of Social Service of _____ County.

I understand that this placement is pursuant to Family Court Act § 1021 and I have been informed that, in the event I do not consent to the placement of my child (children), Child Protective Services will apply to the _____ County Family Court for a temporary removal order pursuant to Family Court Act §1022. I realize that if the application was granted, it would provide for the temporary placement of my child(ren).

I (We) understand that a Child Protection Petition will be filed forthwith in _____ County Family Court on behalf of the above named child (children) and that I (we) will be given notice of the date, time and place of the hearing.

_____

Signature of Parent(s) or Guardian

Date:_____

Witness:_____

3. Intent to ask Family Court for a temporary removal (per FCA §1023)

This letter is a notice to parent(s) or legal guardian(s) that CPS uses an application with the County Family Court for an order to temporarily remove child(ren) as per the FCA §1023.

Sample letter

Dear _____,

Re: **NYS Case #** _____
Report ID # _____
Report Date _____

This is to inform you that we intend to apply to the Family Court of the State of New York, County of _____, for an order of temporary removal [or for a temporary order of protection] [or an order for the provision of the following service, services or assistance: _____] The court is located at _____.

You have a right to be present in court when the application is made and to be heard on the application. You have the right to be represented by a lawyer and, if you can't afford a private lawyer, you have the right to ask the court to assign a lawyer.

Date: _____

Name: _____

Title: _____

Agency: _____

Address: _____

Telephone Number: _____

4. Mandatory reporter consent to release identifying information

This letter is used by mandated reporter to authorize release of his/her identity to a specified person as a source of a report made to the SCR.

Sample letter

I, _____ , am the source and/or person who made the report of suspected child abuse or maltreatment concerning _____. (child named in the report)

By this consent, I hereby authorize disclosure of my identity as the source and/or person making the report as stated in the reports and records in the possession of the New York State Office of Children and Family Services and/or the local department of social services to _____, as _____ (requestor), who resides at _____**.** (relationships to child / report)

I am aware that my identity and facts which would identify me as the source and/or person making the report are generally confidential pursuant to SSL §422.4(A). I realize that disclosure by me that I am the source and/or person making the report is solely within my discretion with respect to certain entities and persons, including _____ (requestor) as _____**.** (relationship to child / report)

Knowing that, I am hereby consenting to the release of such information about my identity in the possession of the New York State Office of Children and Family Services and/or the local department of social services to _____.

_____ _____

DATE NAME

_____

ADDRESS

5. Model notice of existence of a report (sent by a custodial agency where children are in foster care in a different social services district)

This model notice informs the LDSS that a report of suspected child abuse or maltreatment has been made regarding a child in foster care who is under the LDSS's care and custody. See policy 16-OCFS-ADM-13, "Requirements Relating to CPS Reports Regarding Foster Parents."

Sample letter

RE: NYS CASE # _____
REPORT ID # _____
REPORT DATE _____

This is to inform you that _____, a child(ren) placed in your care and custody, has been named in a report of suspected abuse or maltreatment. The foster parent(s) named the subject(s) of the report is/are _____.

This report, which was received by the New York Statewide Central Register of Child Abuse and Maltreatment (State Central Register) on _____, has been transmitted to the _____ County Department of Social Services child protective service unit for investigation as required by SSL §§422 and 424.

SSL §424 allows the local child protective service 60 days from the time of receipt of the report to complete a full investigation of the allegations contained within the report as well as an evaluation of the care being provided to the child(ren) placed in the home.

If the report is determined to be "unfounded", meaning that there is no credible evidence to prove the child was abused or maltreated, all information regarding the child(ren) and the subject of the report will be sealed in the State Central Register. If the report is determined to be "indicated", meaning there is some credible evidence that the child was abused or maltreated, the information will remain on file in the State Central Register.

After the investigation is completed you will be notified of the report determination. As the agency with care and custody of this child(ren), you will receive copies of the State Central Register reports if the report is indicated. If the report is unfounded you will be notified of the determination and it will be suggested that you update your records as to the unfounded determination.

If you wish to receive more information about this report, please contact _____.

Sincerely,

_____

Commissioner, _____ County DSS

cc: Authorized Agency Supervising the Placement

6. Relative model notification letter

Both federal and state law require that due diligence be exercised to identify and locate a child's relatives within 30 days of the child's removal from the custody of the child's parent(s). The local social services district must provide the relatives with notification of the child's removal and explain the options under which the relatives may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. OCFS permits social services districts to make the notification verbally or in writing and does not prescribe a required format for the written notification. However, it is strongly recommended by OCFS and ACF that written notice be made. OCFS requires that relatives be given a copy of *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children*, if the relative is considering becoming the child's caregiver (see 09 OCFS-ADM-04). OCFS also requires that relatives be given a copy of Know Your Permanency Options: The Kinship Guardianship Assistance Program (see 11-OCFS-ADM-03 and 18-OCFS-ADM-03). As an option, OCFS also developed a brochure titled Know Your Options: Relatives Caring for Children (see 10 OCFS-INF-03) and a brochure titled *Know Your Options: Kin Caring for Children* (Pub.5175).

OCFS has developed a model notification letter that includes a brief description of the KinGAP option for relatives (other than a non-custodial parent). LDSS may use this model or develop their own relative notification letter, as long as it includes information on KinGAP, or verbally share this information with the relative(s).

Below is the model notification letter; for additional information please see 11-OCFS-ADM-03. A Spanish version is avalible online.

Sample letter

[Date]

[Relative Name]
[Street Address]
[City, ST ZIP Code]

Dear **[Relative Name]** :

My name is **[Caseworker's Name]** and I am a caseworker for **[LDSS/agency name]** . I am working with the **[Family's Name]** family. Their child **[Child's Name],** who was born on **[DOB] ,** is now in the custody of **[LDSS/agency name]** . I am contacting you because your name was given to me as a relative of **[Child's Name]** .

Relatives play an important role in the lives of children, especially those who are being temporarily cared for by someone other than their parents. Children do better when they are placed or able to stay connected in other ways to people who know and care about them.

I am contacting you to see if you are interested in being considered as a placement resource for or otherwise staying in contact with **[child's first name]** . I would like to discuss with you your options for helping to care for **[child's first name]** . For example, you may want to offer a temporary home for **[child's first name]** so he/she does not need to be placed in foster care, or you may be

interested in applying to be a foster parent for **[child's first name]** . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If permanent care for **[child's first name]** other than return to parent(s) becomes necessary, you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that relatives may be eligible for when at first they serve as the foster parent to a child. Both programs provide financial support, and in most cases medical coverage for the child until the child reaches the age of 18, or in some cases 21, for as long as the guardian or adoptive parent remains legally responsible for the child and provides support. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

If you are not able to provide a home for **[child's first name]** , there are other ways for you to stay involved in his/her life and offer important family connections. You might visit regularly, arrange weekend or holiday visits at your home, otherwise keep in contact or offer support to the child or family.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at **[phone number]** . I also ask that you share with me names and contact information of other relatives you think may be interested in connecting with or being a resource for **[child's first name]** .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]

[**Title**]

7. Parent of sibling (model) notification letter

The Preventing Sex Trafficking and Strengthening Families Act (the Act) expanded the range of relatives who must be notified when a child is removed from his or her home or when parents voluntarily transfer care and custody of the child in accordance with SSL §384-a. With the Act's requirement for relative notification, the birth or adoptive parents with legal custody of the removed child's sibling(s) or half-sibling(s) are now considered to be adult relatives for whom the LDSS must exercise due diligence to identify and provide notification of the child's removal and explain the options under which the sibling's parent(s) may provide care of the child through foster care or direct legal custody or guardianship, including kinship guardianship assistance, and any options that may be lost by failure to respond timely to the notification [see also 18 NYCRR 430.11(c)(4)]. See 15-OCFS-ADM-01 for more information on the notification requirement.

Below is the Sibling Parent Notification Letter (Model Letter). The letter contains a brief description of KinGAP, as KinGAP may later become a viable permanency option. See policy 18-OCFS-ADM-03. LDSS may use this model or develop their own notification letter, so long as it includes information on KinGAP. A Spanish version is available online.

OCFS also requires that a copy of Know Your Permanency Options: The Kinship Guardianship Assistance Program (Pub. 5108) be given. (See 18-OCFS-ADM-03).

Sample letter

[Date]

[Sibling Parent Name]
[**Street Address**]
[**City, ST ZIP Code**]

Dear **[Sibling Parent Name]**:

My name is **[Caseworker's Name]** and I am a caseworker for **[LDSS/agency name]** . I am working with the **[Family's Name]** family. Their child **[Child's Name],** who was born on **[DOB] ,** is now in the custody of **[LDSS/agency name]** . I am contacting you because your name was given to me as a parent of a sibling of **[Child's Name]** .

Brothers and sisters play an important role in the lives of children, especially those who are being temporarily cared for by someone other than their parents. They are part of a child's family, and children most often do better when they are placed in the same home as or able to stay connected in other ways to their family.

I am contacting you to see if you are interested in being considered as a foster care placement resource for or otherwise staying in contact with **[child's first name] .** I would like to discuss with you your options for helping to care for **[child's first name]** . For example, you may want to offer a temporary home for **[child's first name]** so he/she does not need to be placed in foster care, or you may be interested in applying to be a foster parent for **[child's first name]** . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options

available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If permanent care for **[child's first name]** other than return to parent(s) becomes necessary, you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that relatives and certain non-relatives may be eligible for when they first serve as the foster parent to a child. Both programs provide financial support and in most cases medical coverage for the child until the child reaches the age of 18, or in some cases 21. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at **[phone number]** . I also ask that you share with me names and contact information of other relatives you think may be interested in connecting with or being a resource for **[child's first name]** .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]

[**Title**]

8. Non-relative notification letter

Chapter 384 of the Laws of 2017, otherwise known as "KinGAP Expansion", expanded eligibility for KinGAP to include certain non-relatives of a child. Such persons are adults who have been caring for a child in foster care for 6 months or more, and:

- are related by blood, marriage or adoption to a half-sibling of the child, and are also the prospective or appointed relative guardian of such half-sibling, or
- have a positive relationship with the child that was established prior to the child's current foster care placement.

See 18-OCFS-ADM-03 for more information.

After a child's removal, the court will direct the LDSS to identify and notify relatives and any suitable persons identified by any respondent parent or non-respondent parent and inform them of the options for taking custody [see §1017 FCA]. Such suitable persons include non-relatives who may, should they decide to care for the child through foster care, become eligible for KinGAP. Therefore, OCFS has developed a model notification letter for non-relatives that includes information about KinGAP. LDSS may use this model or develop their own notification letter, so long as it includes information on KinGAP. A Spanish version is available online.

OCFS also requires that a copy of *Know Your Permanency Options: The Kinship Guardianship Assistance Program* (Pub. 5108) be given (see 18-OCFS-ADM-03).

Sample letter

[Date]

[Potential Placement Resource Name]
[Street Address]
[City, ST ZIP Code]

Dear [**Potential Placement Resource Name**]:

My name is [**Caseworker's Name**] and I am a caseworker for [**LDSS/agency name**] . I am working with the [**Family's Name**] family. Their child [**Child's Name**], who was born on [**DOB**] , is now in the custody of [**LDSS/agency name**] . I am contacting you because your name was given to me as a person with a significant connection to [**Child's Name**] .

Children dealing with change rely on the support of adults they know and trust, particularly when those children are being temporarily cared for by someone other than their parents. Children do better when they are placed or able to stay connected in other ways to people who know and care about them.

I am contacting you to see if you are interested in being considered as a placement resource for or otherwise staying in contact with [**child's first name**] . I would like to discuss with you your options for helping to care for [**child's first name**] . For example, you may want to offer a temporary home for [**child's first name**] so he/she does not need to be placed in foster care, or you may be interested in applying to be a foster parent for [**child's first name**] . Depending on the type of involvement you are interested in, there may be financial, medical, or other support available. Be aware, eligibility for programs or assistance described below, and the options available for the child's permanency, can be impacted by the decisions made at the time of initial placement. You should be sure you understand these impacts. Please ask me any questions you may have about this process.

If [**child's first name**] is unable to be returned to the care of their parent(s), you may be interested in guardianship or adoption. New York State has both a kinship guardianship assistance program and an adoption subsidy program that caregivers may be eligible for when they serve first as the foster parent to a child. Both programs provide financial support, and in most cases medical coverage for the child until the child reaches the age of 18, or in many cases 21. Please review the materials enclosed with this letter for more information about placement options and contact me if you have questions.

If you are not able to provide a home for [**child's first name**] , there are other ways for you to stay involved in his/her life and offer important family connections. You might visit regularly, arrange weekend or holiday visits at your home, otherwise keep in contact or offer support to the child or family.

Please contact me as soon as possible so I can assist you with reviewing all the options and providing you with any forms or applications you may need. I may be reached at [**phone number**]. I also ask that you share with me names and contact information of other people you think may be interested in connecting with or being a resource for [**child's first name**] .

Thank you, and I look forward to hearing from you.

Sincerely,

[**Your Name**]
[**Title**]

C. Alternative notice of existence of report letters

There are four alternative (CPS) Notice of Existence of Report letters, which local districts are free to use as an alternative to the existing CPS Notice of Existence of Report letters that are generated through CONNECTIONS. These alternative letters were developed primarily to better emphasize that CPS can be a source of assistance to families. These alternative CPS Notice of Existence of Report letters inform subjects and other persons named in the CPS report that the family members' own perception of their needs and strengths is an important component in CPS's assessment of child safety.

One set of letters is intended for use when the CPS worker is meeting with the subject and/or other person(s) named in the report, while the other set of letters is intended to be mailed to the subject and/or other person(s) named in the report. They are as follows:

1. Alternate Notice of Existence of Report (Subject(s) – Familial)
2. Alternate Notice of Existence of Report (Subject(s) – Familial) (Not Personally Delivered)
3. Alternate Notice of Existence of Report (Other Person(s) Named in the Report – Familial)
4. Alternate Notice of Existence of Report (Other Person(s) Named in the Report – Familial) (Not Personally Delivered)

The fillable Word Templates of these letters can be found attached to 07-OCFS-LCM-14 Alternative CPS Notice of Existence of Report Letters.

Local social services districts choosing to use the alternative CPS Notice of Existence of Report letters should still generate the CONNECTIONS Notice of Existence of Report letters on the date they deliver or mail the alternative letter, and then dispose of them. This will record a system event of the notice and provide a date for reference in the follow-up Notice of Indication, if and when it is system-generated.

D. Notice of child custody proceeding for Native American child

It is necessary to determine at the outset of any court proceeding subject to the Indian Child Welfare Act (ICWA) whether ICWA applies to the child. This promotes stability for the Native American child and the family, and reduces the need for delays and disruptions in the placement decisions for the child. Any child believed to be a Native American child must be treated as such, unless and until it is determined that the child is ***not*** a Native American child.

If there is 'reason to know' in a child custody proceeding that a child is a member or citizen of a tribe/nation, the LDSS must notify the Family Court of this in writing. The LDSS then must notify by either certified or registered mail return receipt requested the tribe(s)/nation(s), parent(s), and, where applicable, any Native American custodian of the scheduled court proceeding and of their rights under ICWA. A copy of this letter must also be sent to the Bureau of Indian Affairs' (BIA) eastern regional director. If the identity or location of the parent, Native American custodian or the tribe/nation cannot be determined, the notice must also be sent to the OCFS Bureau of Native American Services. For more information please see 17-OCFS-ADM-08.

REGISTERED OR CERTIFIED MAIL/RETURN RECEIPT REQUESTED

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

Docket # _____

[Parent Address] [Indian Custodian Address] [Tribe/Nation Address] [Eastern Regional Director Address] [OCFS Native American Services Address]

Dear [parent] [Indian custodian] [Tribe/Nation] [Eastern Regional Director] [OCFS Special Assistant for Native American Services]

Pursuant to the federal Indian Child Welfare Act (25 U.S.C. §1912), the _____ Department of Social Services/Administration for Children's Services, as petitioner in the above proceeding, is giving notice of (check appropriate box)

( ) an involuntary foster care placement proceeding, or

( ) a termination of parental rights proceeding

now pending in the court named below for the following child(ren) (**add additional sheets if additional children are involved**):

Name of Child: _____ DOB: _____

Place of Birth: _____

Name of Child: _____ DOB: _____

Place of Birth: _____

A hearing ( ) has not yet been scheduled or ( ) has been scheduled for:

Date: ___/___/____ Time: ___: __ am/pm

Before the Honorable _____, Judge

Address: _____

Telephone number: _____

The petitioner's attorney:

Name: _____

Address: _____

Phone: _____

A copy of the petition, complaint, or other document filed with the court to initiate the child custody proceeding is attached to this notice.

Rights of Parents, Indian Custodians, and Tribes

- The parent(s) or Indian custodian, if not already a party to the child custody proceeding, has the right to intervene at any point in this proceeding.
- The Indian child's tribe/nation has the right to intervene at any time in a court proceeding for either the foster care placement (exclusive of a juvenile delinquent proceeding) or termination of parental rights involving an Indian child.
- If the Indian child's parent or Indian custodian is unable to afford legal counsel based on a determination of indigency by the court, it is the right of the parent or the Indian custodian to have court appointed counsel.
- The parent or Indian custodian and tribe/nation have the right to be granted, upon request, up to 20 additional days to prepare for the child custody proceedings.
- The parent(s) or Indian custodian and the tribe/nation have the right to petition the court to transfer this proceeding to the tribal court as provided by the Indian Child Welfare Act (25 U.S.C. §1911) and federal regulation (25 CFR §23.115).
- All parties must keep confidential the information contained in this notice, and this notice should not be handled by anyone not needing the information to exercise rights under the Indian Child Welfare Act.
- Be advised that the above referenced proceeding may have significant legal consequences on the future visitation, custodial, and parental rights of the parent or Indian custodian of the child(ren) referenced above.

Tribal Membership and Ancestry of the Indian Child

Complete all known information below regarding tribal membership and ancestry of the Indian child.

If the name and/or location of the Indian child's parent(s), Indian custodian, and/or tribe/nation are unknown, check the 'Request for Assistance'section. This notice must be sent to the Bureau of Indian Affairs and the OCFS Bureau of Native American Services.

( ) Request for Assistance in the Identification or location of child's parent, Indian Custodian, and/or Tribe/Nation:

The petitioner is requesting assistance because we are not able to identify or locate the Indian child's parent(s), Indian custodian, and or Indian tribe/nation. Therefore, in accordance with 25 CFR §23.111(e) and 18 NYCRR 431.18(c) the _____ Department of Social

Services/Administration for Children's Services is hereby requesting the assistance of the Bureau of Indian Affairs and the New York State Office of Children and Family Services in the location and identification of the Indian child's parent or Indian custodian, and/or the child's Indian tribe/nation. The information available to date is provided below.

The child is or may be a member/citizen (or the biological child of a member/citizen) of the following Indian tribe(s)/nation(s): (List each tribe/nation below)

_____ _____

_____ _____

Indian Custodian (if applicable)

Name: _____

Address: _____

Telephone Number: _____

Biological Mother	**Biological Father**
Name (including maiden, married, and former names and aliases):	Name (including maiden, married, and former names and aliases):
Address:	Address:
Birth Date and Place:	Birth Date and Place:
Tribe and Location:	Tribe and Location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:
If known, Mother's Biological Mother (Child's Maternal Grandmother)	**If known, Father's Biological Mother (Child's Paternal Grandmother)**

Name (including maiden, married, and former names and aliases):	Name (including maiden, married, and former names and aliases):
Address:	Address:
Birth Date and Place:	Birth Date and Place:
Tribe and Location:	Tribe and Location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:
If deceased, date and place of death:	If deceased, date and place of death:

If you need additional information, please call _____ at _____. Your earliest response would be most appreciated.

Respectfully,

Caseworker: _____

Attorney: _____

cc: New York State Office of Children and Family Services
Bureau of Native American Services
295 Main Street
Buffalo, New York 14203

Bureau of Indian Affairs
Eastern Regional Director
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

Attachment(s)

E. Definitions of allegations related to child abuse and maltreatment

The following definitions are descriptive and not all-inclusive. Determinations of child abuse and/or maltreatment are made on a case-by-case basis. The "immediate considerations" which follow each definition statement are listed to structure the collection of facts and the organization of information in the *initial* investigation, immediately following the receipt of the report. These considerations are not a substitute for full and detailed fact-gathering and assessment of the child(ren) and family.

For each situation the caseworker must carefully obtain current facts and related history, and apply these facts and history to the statutory definitions contained in SSL §412 and FCA §1012 oto see whether child abuse or maltreatment has occurred.

Such facts as the age of the child, the type, severity, frequency of harm or danger of harm, and the acts or omissions of the parent or person legally responsible for the child's care must be thoroughly assessed in every case. All children in the family setting must be evaluated not just the child who is named in the report of abuse or maltreatment.

1. Fractures

A fracture is a break in a bone. Common types are:

- *chip fracture,* a small piece of bone is flaked from the major part of the bone;
- *comminuted fracture,* the bone is crushed or broken into a number of pieces'
- *compound fracture*, fragments of bones protrude through skin;
- *simple fracture,* bone breaks without wounding surrounding tissue;
- *spiral fracture,* the line of the fracture is twisted encircling the bone; and
- *torus fracture,* a folding, bulging, buckling fracture.*

Medical examination is necessary to determine the nature and extent of the injury. In cases of fractures, diagnosis depends on the result of x-rays. It is essential that adequate x-ray films be obtained and interpreted by a qualified medical professional.

Qualified interpretation of the initial x-ray of an *epiphyseal fracture* often involving growing bones of the arms or legs, is particularly important. An epiphyseal fracture is an injury to the epiphyses, a part or process of a bone which is separated from the main body of the bone by a layer of cartilage. The epiphyses become united with the bone through further growth of bony tissue (callus). Because the fracture has occurred through cartilage, little can be noted from the initial x-ray examination, aside from extensive tissue swelling. By the tenth day following the initial injury, build-up of callus will demonstrate the extent and magnitude of the injury. These injuries can lead to abnormal growth and permanent deformities.

In general, the major causes of bone fractures in childhood are falls, injuries while playing or engaging in athletic activities or while moving heavy objects or equipment, or car/bicycle accidents. Frequent sites of fractures are: the clavicle (collar bone), humerus (the long bone in the arm which extends from the shoulder to the elbow), the forearm, the elbow, femur (the thigh bone) and fingers. During periods of rapid growth, children may sustain fractures of long bones from minor twists or sprains. For example, the shinbone is susceptible to spiral fracture in children between the ages of two and five years; however, spiral fractures are unlikely to occur to children who are not yet ambulatory. In the growing child, fractures of the skull, the pelvis, neck, thigh bone, and spine occur from major trauma.** Fractures that are suggestive of abuse include rib fractures, metaphysical chip or corner fractures, long bone fractures in a pre-

ambulatory child, scapular, sternal or spinous process fractures without a history of severe trauma, multiple fractures in different stages of healing, multiple skull fractures, and healing fractures without a consistent time of injury. ***

Bone fractures which are unexplained, or where the reason given for the fracture is inconsistent with the nature of the injury, may be indicators of child abuse or maltreatment. Nelson's *Textbook of Pediatrics* (Sixteenth Edition) recommends when physical abuse is suspected in a child younger than two years, a radiologic bone survey consisting of multiple views of the skull, thorax, long bones, hands, feet pelvis, and spine is necessary. For children two-four years of age, a bone survey is indicated unless the child is adequately verbal, has very minor injuries or was in a witnessed and supervised setting (e.g. preschool) when injured. For verbal children older than four or five years, a bone survey needs to be obtained only if there is bone tenderness or a limited range of motion on physical examination.

* *Interdisciplinary Glossary on Child Abuse and Neglect* (US Government Printing Office DHEW Publication No. (OHDS) 78-30137) page 34.

** This paragraph summarizes major issues discussed by John C. Wilson, M.D. in "Fractures and Dislocations in Childhood" *Pediatric Clinics of North America* (Vol., 14, No.3, August 1976).

*** *Recognition of Child Abuse for the Mandated Reporter (Third Edition) (2002*) A.P. Giardino, M.D.,Ph.D.; E.R. Giardino, Ph.D., R.N., C.R.N.P.) page 12.

► *Immediate considerations*

- Were adequate x-ray films obtained and what were the findings?
- Was a detailed physical examination performed and what were the findings? If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the fracture? What were the results? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the fracture, and is the explanation consistent with the type and location of the fracture and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control over the child at the time of the injury and during the events leading to the injury?

2. Internal injuries

There are four major categories of internal injuries. Medical examination is necessary to determine the nature and extent of these injuries.

1. **Injuries to the Face**

   The eyes are particularly sensitive organs and blunt trauma to the eye can cause hemorrhages, dislocate the lens or detach the retina. A direct blow to the nose may cause bleeding, swelling or deviation of the bone. Blows to the mouth may result in swelling, lose or missing teeth. Abuse/maltreatment-related injuries to the ear include twisting injuries of the lobe and bruises, ruptures or hemorrhaging.

2. **Injuries to the Head and Nervous System**

   Injuries to the head are especially serious because they may injure the brain. Head injuries may result from sharp blows or severe shaking especially of infants.

Trauma to the spinal cord may cause damage to motor nerves and lead to paralysis of muscles. Other signs of head or nerve injury are loss of consciousness, seizures, numbness in the arms or legs or increased drowsiness; however, it must be remembered that an unconscious child may be suffering from the effects of medication or poison.

Injuries to the head may also be caused by hair pulling. Bald patches on the head interspersed with normal hair may be evidence of such injury; however, medical examination is necessary to examine the extent of the injury and rule out other causes.

3. **Subdural Hematomas**

   A subdural hematoma is an accumulation of blood in the space between the outermost covering of the brain and covering of the brain. In many cases there is no associated skull fracture or bruising or swelling on the site of the injury. In the acute form, there is direct injury to the brain. In the chronic form, there is a gradual accumulation of blood resulting in headaches, progressive stupor, muscular weakness affecting one side of the body, and other symptoms which may appear weeks after the injury. This injury can be caused by a sharp blow to the head or the severe shaking of an infant (see - CHOKING, TWISTING, SHAKING). With infants, the only sign of injury may be coma or seizure.

4. **Abdominal Injuries**

   Signs of abdominal injury include recurrent vomiting, swelling and tenderness. A blow or other trauma may also injure other organs such as the liver and kidney.

   Forceful blows to the abdomen may also cause bruises and ruptures resulting in hemorrhage, shock or death.

► *Immediate considerations*

- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? What were the results? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control over the child at the time of the injury and during events leading to the injury?

3. Lacerations / Bruises / Welts

Lacerations are jagged cuts or tears in the skin. The presence of multiple skin injuries in various stages of healing may be indicators of child abuse or maltreatment. Medical examination is needed to determine the nature and extent of these injuries. Skin injuries, such as scars or other disfigurements often resemble the shape of the instrument used: strap marks, belt buckles, looped cords, choke marks on the neck, bruises from gags, rope burns, or blisters especially around the wrists or ankles.

Welts are raised ridges on the skin, often seen in the lower back area and are usually left by a slash or blow. Skin injuries of this nature may also be due to scraping or rubbing.

Human bite marks are distinctive crescent shaped lines of tooth imprints. A child's bite can be distinguished from an adult's by the larger size of the arch of the crescent. Human bites compress flesh causing bruises; animal bites normally tear the flesh.

Bruises are caused by bleeding beneath the skin without tearing it. They may often be fingertip in size and distribution. Old and multiple new bruises, and/or bruises on the face/back of legs are suspicious. Bleeding disorders might be the reason for the child's bruises. This is not common, but needs to be ruled out by medical tests. The caseworker must be constantly mindful that some bruises are a normal occurrence in growing children and care must be taken to assess the situation fully. Medical examination is needed to determine the nature and extent of these injuries.

► *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Has the physician recorded a precise description of the injury including age of the injury, location of the body, color, and whether other injuries were evident?
- If child abuse or maltreatment is suspected, have color photographs been taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title, and address.
- Were the child and the family interviewed concerning the history and explanation of the injury, and it is consistent with the type and location of the injury and the child's age and condition? Good note-taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control at the time of the injury and during events leading to the injury?

4. Swelling / Dislocations / Sprains

Swelling at points where two bones join, tenderness at the ankles, wrists or other joints are signs of skeletal injuries without fracture. A child's ability to walk is limited by such injuries to the legs.

If a child's leg or arms are pulled or jerked or twisted suddenly or forcibly, a bone can be put out of position (dislocation), or the ankles and wrists or other parts of the body at a joint can be sprained. Medical examination is necessary to determine the nature and extent of these injuries.

► *Immediate considerations*

- Were adequate x-ray films obtained? What were the results?
- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control over the child at the time of the injury and during events leading to the injury?

5. Choking / Twisting / Shaking

Twisting and shaking children can produce serious injuries. Twisting injuries to the ear can cause injuries to the earlobe; in cases of sexual abuse, genitals may be injured by twisting.

Repeated or forcible twisting of a child's arms or legs can result in a spiral bone fracture. Violent shaking can cause injury to the brain or spinal column; repeated blows and shaking can cause hemorrhages and swelling.

Choking occurs by compression of the child's windpipe which stops breathing. Hands or cords or long scarves placed on the neck can cause such compression if pressure is applied. Suffocation can result when a foreign body or object such as food (peanuts, chicken bones), coins, safety pins, plastic bags, or balloons become lodged in the windpipe. Infants between 6 to 12 months are particularly likely to place things in their mouths; any child under six years of age should receive close supervision when near foreign objects which could be swallowed (see LACK OF SUPERVISION). Medical examination is necessary to determine the nature and extent of these injuries.

► *Immediate considerations*

- Was a detailed physical examination performed and what were the findings?
- If child abuse or maltreatment is suspected, were color photos of visible trauma taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? What were the results? Identify professionals by name, professional title and address.
- Was the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent’s/other person legally responsible’s control over the child at the time of the injury and during events leading to the injury?

6. Burns / Scalding

Damage to skin tissue is caused by direct contact with heat, hot liquid, chemicals, vapor, or fire. Burns of the first degree show redness; in the second degree, blistering; and in the third degree, destruction of the skin tissue. These signs vary with the skin color of the child.

Burn features suggestive of abuse or maltreatment include glove or stocking burns, doughnut burns, burns in a geometrical shape, scald burns on the back, burns on the buttocks or genital areas, burns on the back of the hands, contact burns involving both palms, cigarette burns, burns in multiple locations, and burns on areas typically protected by clothing (Recognition of Child Abuse for the Mandated Reporter (Third Edition) (2002) (A. P. Giardino, M.D., Ph. D.; E. R. Giardino, Ph.D., R.N., C.R.N.P.) page 11). Rope burns often occur on the ankles, wrist or neck. In suspected cases of abuse or maltreatment, cigarette burns most often appear on the hands, feet and buttocks. Care must be used in distinguishing cigarette burns from impetigo, a contagious skin disease marked by small elevations of the skin containing pus. Scaldings may result from an act or an omission of parent such as failure to supervise the child. Scaldings may also be inflicted as punishment, such as immersion in hot water. Medical examination is necessary to determine the nature and extent of the injury. Color photographs should be taken in suspected cases of child abuse and maltreatment.

▶ *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Has the physician recorded a precise description of damage to the skin tissue including age of the injury, location, degree of damage, color and whether any other injuries were apparent?
- If child abuse or maltreatment is suspected, have color photographs of the visible trauma been taken?
- Was a discussion held with medical professionals concerning the child's condition and their opinion as to the nature and cause of the injury? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the injury, and is it consistent with the type and location of the injury and the child's age and condition? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control at the time of the injury and during events leading to the injury?

7. Poisoning / Noxious substances

Prescribed medication, non-prescribed medication, household cleaning products, oils, paint thinners, fuels, fertilizers, and some house plants are among the materials which can cause serious harm if ingested by a child. The total circumstances must be considered, but certain components are key in evaluating whether child abuse or maltreatment is present:

- Age of the child;
- Location of the noxious substance;
- Way in which the substance is stored and labeled (for example, is it placed in a locked cabinet or out of reach of the child);
- Other steps the parent takes to guard against access by a child;
- Actions taken to seek care for the child;
- Previous incidents and pattern of care.

Certain poisonings or the ingestion of other harmful substances by a child may be due to acts of a parent or other person legally responsible, or caused by omissions in supervising the child. If the child is an infant, intentional poisoning should be considered. Medical examination is necessary to determine the nature and extent of the injury.

▶ *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- What is the age and capacity of the child?
- Was a discussion held with medical professionals concerning their opinion as to the nature and cause of the child's condition? Identify professionals by name, professional title and address.
- Were the child and family interviewed concerning the history and explanation of the incident? Good note taking is essential. Use direct quotes.
- What was the extent of the parent's/other person legally responsible's control of the child at the time of incident and during events leading to the incident?

— Did the parent perceive danger to the child and take steps to prevent harm to the child? What steps were taken?

— What actions were taken by the parent after the incident?

8. Excessive corporal punishment

Excessive corporal punishment constitutes maltreatment. Corporal punishment is excessive if it goes beyond what is objectively reasonable. In assessing what is reasonable, the following are critical to consider:

- The child's age, sex, physical and mental condition, and capacity to understand correction;
- The nature of the punishment;
- The seriousness of injury to the child or risk of serious injury;
- The means of punishment used - is it appropriate to correct the child's behavior are less severe alternatives available;
- The purpose of the punishment;
- The child's behavior which requires correction;
- The character of the punishment, whether it is degrading or brutal;
- Duration of punishment, whether it is protracted beyond the child's endurance.

► *Immediate considerations*

— Has a complete and detailed physical examination been performed? What were the results?

— Are there any visible signs of injury to the child's body? Has the physician recorded a precise description of the injury, including age of the injury, location on the body, color, other injuries which have healed, and diagnosis? If child abuse or maltreatment is suspected have color photographs been taken?

* The use of *reasonable* corporal punishment by a parent or other person legally responsible is permissible pursuant to Penal Law § 35.10; however, corporal punishment of children in care of authorized agencies is prohibited by New York State OCFS regulation 18 NYCRR 441.9.

— What is the child's capacity to understand correction?

— Were the child and family interviewed concerning the history, purpose and reason for punishment? Good note taking is essential. Use direct quotes.

— What was the character and means of punishment and how long did it last?

9. Parent's drug / Alcohol misuse

The misuse of legal or illegal drugs or alcohol by a parent or other person legally responsible for the care of a child can result in harm or imminent danger of harm to a child's physical, mental or emotional condition. The key issue to determine is whether the parent has misused a drug or drugs or alcoholic beverage to the extent that he/she loses self-control of his/her actions and is unable to care for the child, has harmed the child, or is substantially likely to harm the child. The fact that the parent or person legally responsible is voluntarily and regularly participating in a rehabilitative program is irrelevant in assessment of whether child abuse or maltreatment has occurred if the child's physical, mental or emotional condition has been impaired or is in imminent danger of impairment due to the parent's acts or omissions.

Evidence that a newborn infant tests positive for a drug or alcohol in its bloodstream or urine; is born dependent on drugs or with drug withdrawal symptoms; demonstrates fetal alcohol effect or fetal alcohol syndrome; or has been diagnosed as having a condition which may be attributable to in utero exposure to drugs or alcohol is not sufficient, in and of itself, to support a determination that the child is abused or maltreated. In addition, such evidence alone is not sufficient for a social services district to take protective custody of such a child. However, such evidence alone is sufficient to constitute reasonable cause to suspect that the child is at risk of being abused or maltreated in the future, thereby warranting a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) and the commencement of a child protective investigation.

Upon the receipt of a report where parental drug or alcohol misuse is alleged, the social services district must conduct a thorough investigation to determine whether such misuse creates a risk to the child. The district must assess the ability of the parent to care for the child. The district must examine, in particular, the parent's plans for the care of the child and his/her ability to carry out those plans to determine whether the parent's drug or alcohol use creates a condition which places the child's physical, mental or emotional condition in imminent danger of becoming impaired. In the case of a newborn infant born to a drug or alcohol abusing parent, any special needs of such infant should be considered in the district's assessment of parental capability.

► Immediate considerations

- What is the child's physical, mental, or emotional condition? Has the child been harmed or in imminent danger of harm?
- What is the parent's/other person legally responsible's explanation for these conditions? Good note taking is essential. Use direct quotes.
- What are the results of medical examination concerning the parent's drug or alcohol use?
- What is the parent's/other person legally responsible's capacity to exercise a minimum degree of care to meet the child's physical, mental and emotional needs?

10. Child's drug / Alcohol use

The use of drugs or alcohol can cause serious harm to a child's mental and physical development, or place the child in imminent danger of harm.

To be considered child abuse or maltreatment, a child's use of drugs or alcohol needs to be a result of:

- A quantity sufficient to cause harm or imminent danger of harm to the child's physical development, or mental health; and
- Parental failure to exercise a minimum degree of care in preventing the child's use of this quantity of drugs or alcohol (see **Lack of Supervision**) or encouraging or providing the child's use of this quantity of drugs or alcohol.

Parental actions in the wrongful administration of legally prescribed drugs or failure to administer prescribed drugs to the child which create or allow to be created a substantial risk of physical injury or impaired condition or imminent danger of impaired condition may also indicate abuse or maltreatment. (see **Inadequate Guardianship**)

► *Immediate considerations*

- What is the age and physical and mental condition of the child?

- What is the type, quantity, and quality of drug or alcohol involved? How long has this behavior been continuing? Have the parents been aware of these activities?
- What was the effect of the drug/alcohol use on the child?
- What was the extent of the parent's/other person legally responsible's control over the child at the time of the incident and during events leading to the incident?
- What is the parent's explanation? Good note taking is essential. Use direct quotes.
- Did the parent's/other person legally responsible's actions meet the minimum degree of care needed by the child?

11. Lack of medical care / Medical neglect

A parent or other person legally responsible for the child must supply adequate medical, dental, optometrical or surgical care if financially able to do so or offered financial or other reasonable means to do so.

This includes:

- Seeking adequate treatment for conditions which impair or threaten to impair the child's mental, emotional or physical condition;
- Following prescribed treatment for remedial care including psychiatric and psychological services;
- Obtaining preventive care such as post-natal check-ups, and immunizations for polio, mumps, measles, diphtheria and rubella.

The parent's failure to seek or follow adequate treatment or desire to select an unconventional form of treatment must be considered in light of:

- The seriousness of the child's condition and risk of further harm to the child
- The parent's awareness of the child's condition and risk of further harm to the child;
- Whether the parent has sought accredited medical opinion;
- The consensus of responsible medical authority regarding treatment;
- Whether the parent's failure to seek adequate treatment or select an unconventional form of treatment impairs the child physically or emotionally;
- Whether the parent fails to seek adequate treatment despite financial or other reasonable means to do.

Article 10 of the Family Court Act authorizes intervention not only in life and death emergencies, but also in situations where a child is denied adequate medical, dental, optometrical, or surgical care due to the parent's or person legally responsible's failure to provide "an acceptable course of medical treatment for their child in light of all the surrounding circumstances. The court's inquiry should be whether the parents, once having sought accredited medical assistance, and having been made aware of the seriousness of their child's affliction, and the possibility of cure if a certain mode of treatment is undertaken, have provided for their child a treatment which is recommended by their physician, and which has not been totally rejected by all responsible medical authority." *In the Matter of Hofbauer*, 47 N.Y. 2d 648, 393 N.E. 2d 1009, 419 N.Y.S. 2d 936 (1979).

The same test applies in cases in which a parent objects to medical treatment based on religious belief. The focus must be whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. A child who has been

harmed or who is in imminent danger of harm, as a result of a parent's failure to supply adequate medical, dental, optometrical, or surgical care, although financially able to do so or offered reasonable means to do so is a neglected child. *In the Matter of Greqorv S. et al*, 85 Misc. 2d 845, 380 N.Y.S. 2d 620, (Fam. Ct., Kings Co. 1976)

► *Immediate considerations*

- In the opinion of accredited medical professionals, what is the nature and extent of the child's condition?
- Did the parent/other person legally responsible seek accredited medical assistance for the child?
- What do responsible medical authorities prescribe as the recommended form of treatment? Identify authorities by name, professional title and address.
- What is the parent's/other person legally responsible's explanation for his or her course of action? Have inadequate finances blocked parental ability to obtain treatment? Good note taking is essential. Use direct quotes.
- Has the child's condition been impaired by the parent's/other person legally responsible's actions or failures to act?

12. Educational neglect

Each minor from six to 16 years of age must attend full-time day instruction from the first day that school is in session in September of the school year in which he/she becomes six years of age. Exceptions include: a minor who has completed a four-year high school course of study and a minor for whom application for full-time employment certificate has been made and who is eligible therefore may, though unemployed, be permitted to attend part-time school not less than 20 hours per week instead of full-time school. In addition, in each school district, the board of education has the power to require minors from 16 to 17 years of age who are not employed to attend full-time day instruction until the last day of session in the school year in which the student becomes 17 years old. (Education Law §3205)

A minor may also be exempted from attendance where there are sufficient grounds to prove that his/her physical or mental condition would endanger the health or safety of the minor or that of others. Determination of mental or physical condition shall be based upon actual examination made by a person or persons qualified by appropriate training and experience, in accordance with the regulations of the State Education Department. If the child's mental or physical condition, by virtue of which the child is not required or permitted to receive instruction, is due to a mental or physical condition which may be corrected by the taking of reasonable measures, such mental or physical condition justifies only the temporary failure of the child to attend instruction (Education Law § 3208). Regular attendance is required, in accordance with the regulations of the State Education Department. Absences from required attendance shall be permitted only for causes allowed by the general rules and practices of the public schools and for religious observance and education as the Commissioner of Education establishes (Education Law §3210).

A minor may attend instruction at a public school or elsewhere; however, the course of study is prescribed by rule and regulation (Education Law §3204). If home instruction is provided, the burden is on the parent to show that home instruction is substantially equivalent to minors of like age and attainments at public school. "Substantially equivalent" means equal in worth or value, meeting essential and significant elements and correctly covering the subject matter for the required courses.

A child with a disability means a person under the age of 21 who is entitled to attend public schools and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. (Education Law §4401)

To be considered educational neglect, the following must be present:

- Unexcused absence from full-time instruction; or
- The course of study provided to the minor does not comport to requirements of State Education Law; and
- The parent's or legally responsible person's failure to exercise care in enrolling or facilitating school attendance (not the child's desire to be truant);
- The school notifies the parent or person legally responsible regarding unexcused absences.
- The parent's or legally responsible person's failure to cooperate in obtaining a special educational plan for a child, when such a plan is recommended and provided by the school district.
- The child's education has been impaired or harmed or there is imminent danger of such impairment or harm.

► *Immediate considerations*

— What is the reason for the child's absence from school? Both child and parent should be questioned. Good note taking is essential. Use direct quotes.

— Is this absence permitted by the general rules and practices of the public schools or as the Commissioner of Education establishes?

— What steps did the parent or other person legally responsible take to insure the child's attendance?

— Did the school notify the parent or other person legally responsible of the child's absence?

— If the child's place of instruction is at home or elsewhere, is the child receiving substantially equivalent instruction to minors of like age and attainment in public schools?

— Do school district records indicate that the child(ren) are on home instruction? (It may assist in investigating a report alleging educational neglect to contact the school district prior to visiting the home. This is especially the case when the source of the report is not a school official.)

— What steps did the parent or other person legally responsible take to insure that a special educational plan was established for the child?

— Is the child in imminent danger of educational impairment or has educational impairment occurred?

13. Emotional neglect

To establish emotional neglect, there must be evidence of substantially diminished psychological or intellectual functioning in the child *and* this condition is attributable to the parent's/other person legally responsible's conduct.

Three factors are present:

- Parental (person legally responsible) pattern of behavior has a harmful **effect** on the child's emotional health and well-being.
- The effect of emotional neglect can be **observed** in the child's abnormal performance and behavior.
- There is **substantial impairment** to the child's ability to function as a normal human being — to think, to learn, to enter into relationships — **due to parent's/other person legally responsible's conduct.**

The child's emotional health and development may be substantially impaired in relation to, but not limited to, the following:

- *Control of aggressive or self-destructive impulses* – lack of control results in harm to the child and/or others. This is not an isolated incident, but an established pattern of behavior.
- *Ability to think and reason* – the child's intellectual or psychological functioning is impaired over a specific period of time.
- *Ability to speak and use language appropriately*.
- *Acting out or misbehavior* – incorrigibility, ungovernability, habitual truancy. These behaviors must be exhibited by the child over a significant period of time. They do not include responses to temporary, soon to be resolved, family stresses.
- *Other behavior* – extreme passive behavior, overly adaptive behavior, extreme social withdrawal, psychosomatic symptoms, severe anxiety.

Assessment of the child's emotional health should be conducted by a qualified professional. The psychological or psychiatric evaluation should specify the level of the child's dysfunction, and, to a reasonable medical certainty, whether the dysfunction is causally linked to the acts or omissions of the parent or other person legally responsible for the child's care. Failure to secure an assessment by a qualified professional may subject the district's determination to potential challenge.

A parent or other person legally responsible may be incapable of fulfilling a child's cognitive or emotional needs due to severe mental illness or mental retardation. The fact of mental illness or mental retardation alone does not establish emotional neglect by the parent or other person legally responsible. It must be shown that the parent's/other person legally responsible's mental illness or mental retardation results in impairment of the child's mental or emotional or physical condition.

► *Immediate considerations*

- What is the child's condition? What aspect of the child's emotional health and development has been substantially impaired?
- Was a discussion held with professionals concerning the child's condition and their opinion as to its nature and cause? Identify professional by name, professional title and address.
- What is the parent's/other person legally responsible's capacity to provide care for the child?

- What was the parent's/other person legally responsible's explanation for the child's condition? Good note taking is essential. Use direct quotes.
- Did the parent's/other person legally responsible's actions meet the minimum degree of care needed by the child?
- Is the child's impaired condition clearly attributable to the parent's/other person legally responsible's willingness or inability to exercise a minimum degree of care toward the child?
- How long has the child's impairment lasted? Has the condition stayed the same or become worse?

14. Sexual abuse

A "sexually abused child" is a child less than 18 years of age whose parent, or other person legally responsible for his/her care, commits or allows to be committed a sex offense against such child as defined by Penal Law §130. (FCA §1012 (e)(iii))

Sex offenses in Penal Law §130 include rape, sodomy, and any other non-consensual sexual contact. A "sexually abused child" is also a child less than 18 years of age whose parent, or other person legally responsible for his/her care allows such child to engage in incest, as set forth in Penal Law §§255.25, 255.26 and 255.27 or acts or conduct described in Penal Law §§230.25, 230.30 and 230.32 and article 263. These acts include using a child in a sexual performance and promoting a sexual performance by a child.

For all sex offenses, a person is deemed legally incapable of consent if less than 17 years, or mentally disabled, or mentally incapacitated, or physically helpless (Penal Law §130.05 (3)).

Sexual abuse includes situations in which the parent or other person legally responsible for the child's care *commits* or *allows to be committed*:

- Touching a child's mouth, genitals, buttocks, breast or other intimate parts for the purpose of gratifying sexual desire; or forcing or encouraging the child to touch the parent or other person legally responsible in this way for the purpose of gratifying sexual desire (Penal Law § 130).
- Engaging or attempting to engage the child in sexual intercourse, oral sexual conduct or anal sexual conduct (Penal Law § 255).
- Forcing or encouraging a child to engage in sexual activity with other children or adults (Penal Law § 230).
- Exposing a child to sexual activity or exhibitionism for the purpose of sexual stimulation or gratification of another (Penal Law § 263).
- Profiting from a child involved in prostitution (Penal Law § 230).
- Consenting to the child performing in a sexual performance (Penal Law § 263).

► *Immediate considerations*

- Has a complete and detailed physical examination been performed? What were the results?
- Was a discussion held with medical professionals concerning the condition of the child and their opinion as to the reason for the child's condition? Identify professionals by name and address.

- Was the child interviewed first and separately from the family? Was the family interviewed concerning the child's condition? Good note taking is essential. Use direct quotes.
- Were interviews conducted so that re-traumatization was minimized?
- What was the extent of parental control at the time of the alleged incident?
- Is retribution against the child likely as a result of disclosure?
- Has the appropriate law enforcement agency been contacted?

The following additional information is provided from an OCFS memorandum issued on March 24, 2010; which was updated in February 2017.

SUBJECT: Sex Abuse Reports – Definitions and Criteria

The purpose of the memorandum is to discuss what constitutes "sex abuse" in a child protective context. This memorandum will address the various elements of the provisions in the Penal Law (PL) that support a finding of sex abuse under the Social Services Law (SSL) and the Family Court Act (FCA). Included in this discussion is the identification of the age groupings that are found in various provisions of the PL.

For ease of use, the person who would be the subject of the report for SSL purposes, the respondent for FCA purposes and the defendant for PL purposes will be identified as the “actor” and the person against whom the act was committed, the “victim”. Also, for the purpose of this memorandum, the terms “actor” and victim” are gender neutral.

This memorandum may be used for general informational purposes.

Introduction

For child protective purposes, an abused child is defined as either:

- a child under the age of 18 not in “residential care,” as defined in SSL § 412-1 and who is defined as an abused child as defined in FCA § 1012(e).

  FCA § 1012(e) defines abused child and FCA § 1012(e)(iii) sets forth what constitutes sexual abuse. This definition applies to all child protective cases, except those involving children in residential care (i.e., cases of institutional abuse or neglect). In the interests of avoiding confusion, we will not otherwise discuss cases of institutional abuse or neglect in this memorandum.

  FCA § 1012(e) defines sexual abuse by cross-referencing to various provisions of the PL. The actions that constitute sexual abuse for child protective purposes occur where the actor:

- commits or allows to be committed a sex offense against the victim (child), sex offenses being defined in Article 130 of the PL;
- allows, permits or encourages an act described in PL §§ 230.25, 230.30 or 230.32, which statutes define the three degrees of the crime of promoting prostitution;
- commits an act described in PL §§ 255.25, 255.26 or 255.27, which statutes define the crime of incest; or
- allows the child to engage in an act or conduct described in Article 263 of the PL, which article defines offenses involving sexual performance by a child.

In the material that follows, we will discuss first the four types of sexual abuse listed above and will follow that with a discussion of what constitutes "allowing" sexual abuse to occur.

Types of sex abuse

For child protective purposes, it is a form of sex abuse if the actor commits any of the crimes described and discussed below. As an initial point, the PL definitions or criteria for some of the offenses addressed below include corroboration requirements (i.e., the testimony of the victim alone cannot be a basis for a conviction; something additional is necessary). Pursuant to FCA § 1012(e)(iii)(a), the corroboration requirements of the PL do not apply in child protective cases.

Sex Offenses—Article 130 of the PL

Article 130 of the PL defines thirteen categories of sex offenses. We will discuss each in turn. Several sex offense crimes have been added to the PL in the past decade. Some built on prior existing sex offense crimes for the purpose of increasing the punishment for their violation. As noted above, we will use the term "actor" to refer to the perpetrator, as that is the term generally used in the PL.

Rape—Rape is defined in PL §§ 130.25 (third degree), 130.30 (second degree) and 130.35 (first degree). The physical action in rape is sexual intercourse, which must involve some penetration, however slight, of the vagina by the penis (PL § 130.00(1)). Sexual intercourse falls within the definition of rape in the following circumstances:

1. the sexual intercourse occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless (e.g., unconscious);
3. the victim is less than 11 years old (i.e. has not yet reached his or her 11th birthday);
4. the victim is at least 11 years old but less than 13 years old (i.e., has not yet reached his or her 13th birthday) *and* the actor is at least 18 years old;
5. the victim is at least 13 years old but less than 15 years old (i.e., has not reached his or her 15th birthday) *and* the actor is at least 18 years of age;
6. the victim, irrespective of age, is incapable of consent by reason of being mentally disabled or mentally incapacitated;
7. the victim is less than 17 years old (i.e., has not yet reached his or her 17th birthday) *and* the actor is at least 21 years old; or
8. the victim is incapable of consent by reason of some factor other than being under 17 years old, physical helplessness, mental disability or mental incapacity (e.g., intoxicated or under the influence of drugs).

Items 1 through 4 above are rape in the first degree, items 5 and 6 are rape in the second degree and items 7 and 8 are rape in the third degree. It is an affirmative defense for item 5 that the actor was less than 4 years older than the victim.

Criminal Sexual Act—Criminal sexual act is defined in PL §§ 130.40 (third degree), 130.45 (second degree) and 130.50 (first degree). Criminal sexual act was formerly referred to as sodomy. The physical action in criminal sexual act is oral sexual conduct or anal sexual conduct, which involves contact between the penis and anus, the mouth and penis, the mouth and the anus or the mouth and vulva or vagina (PL § 130.00(2)). Oral sexual conduct and anal sexual conduct fall within the definition of criminal sexual act in the same circumstances as described above for rape; the only difference relates to the physical acts involved. Items 1 through 4 in the list are criminal sexual act in the first degree, items 5 and 6 are criminal sexual act in the second degree and items 7 and 8 are criminal sexual act in the third degree.

Note: New York's "consensual sodomy" statute (PL § 130.38), which formerly made consensual sodomy a sex offense, was repealed effective February 1, 2001.

Sexual Abuse—Sexual abuse as a specific crime under the PL (as opposed to the more generic sense that we tend to use the term to describe generally the whole range of sex offenses and sex-related forms of child abuse) is defined in PL §§ 130.55 (third degree), 130.60 (second degree) and 130.65 (first degree). The physical action in sexual abuse is subjecting another person to sexual contact.

Sexual contact is defined in PL § 130.00(3) as any touching of the sexual or other intimate parts for the purpose of sexual gratification of either party. It includes touching of the actor by the victim as well as the touching of the victim by the actor, directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

There are three aspects to the definition that require some further discussion. First is the question of what constitutes "touching". Touching means that there must be some form of physical contact; threats, gestures or other conduct that does not involve actual physical contact do not constitute sexual abuse (or any form of sex offense, for that matter). Please note also that the touching must involve the sexual or intimate parts of one of the participants but need not be both; the touching of the sexual or intimate parts can be by any portion of the body of the other participant. It is also important to note that the statute and cases provide that the touching can occur through clothing; flesh to flesh contact is not necessary for touching to occur.

Second is the question of what constitutes the sexual or other intimate parts. Although not specifically defined in statute, we can determine a fairly comprehensive list from the case law and analogizing to the other sex offense statutes. The parts in question include: the genitals; the buttocks; for a woman or girl, the breasts or chest; the mouth; the leg; the thigh; and, according to one case, the navel.

Third is the question of sexual gratification. The contact does not have to result in actual sexual gratification; it must be for the purpose of sexual gratification. The purpose does not have to be sexual gratification of both parties; this element is met if the actor seeks his or her own sexual gratification or seeks to stimulate sexual gratification in the victim. Although not set forth in statute, the case law addressing the issue of gratification shows that this element will be considered satisfied where the only reasonable purpose of the contact would be sexual gratification. Where the contact appears to be accidental or where there could be some other reasonable purpose for the contact (administering ointment, for example), there would have to be some more affirmative evidence of sexual gratification as a purpose.

The most common scenarios that would fall within sexual abuse as a sex offense would be cases involving fondling. However, other types of activity that fall within this definition include attempts at rape where contact occurs but there is no penetration of the vagina by the penis; digital penetration of the vagina or rectum where no physical injury is caused; and (according to one case) inserting the tongue into the victim's mouth against the victim's will (i.e., the unconsented French kiss is a form of sex abuse).

Like sexual intercourse, oral sexual contact or anal sexual contact, not all of the activity that can constitute sexual abuse, as described above, is a violation of the PL. Activity that would constitute sexual abuse is a violation of the PL in the following circumstances:

1. the activity constituting sexual abuse occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless;
3. the victim is less than 11 years old;

4. the victim is at least 11 years old but less than 14 years old;
5. the victim is incapable of consent by reason of some factor other than being less than 17 years old;
6. the victim did not consent to the activity constituting sexual abuse, except where the victim's lack of consent is due to the victim being less than 17 years old, the victim is at least 14 years old, and the actor is less than five years older than the victim; or
7. the victim is less than 13 years old and the actor is twenty-one years old or older.

Items 1 through 3 and 7 above are sexual abuse in the first degree, items 4 and 5 are sexual abuse in the second degree and item 6 is sexual abuse in the third degree. Please note that, while items 1 through 5 are similar or identical to the analogous provisions of the rape and criminal sexual act statutes, item 6 uses different standards. Item 6 basically means that a victim under the age of 17 may not consent to activity that would constitute sexual abuse unless the victim is at least 14 years of age and the other party is less than five years older than the victim. For example, if a 14 year old willingly engages in activity that would fall within the definition of sexual abuse with a person who is 18 years old, it is not a violation of the PL; the 14 year old is considered to have the capacity to consent to engage in such activity with a person no more than five years older than the child. However, if the same child engages in the same activity with a 20 year old, it would be a violation of the PL; the child is not considered to have the capacity to consent to engage in such activity with a person more than five years older than the child.

Aggravated Sexual Abuse—Aggravated sexual abuse is defined in PL §§ 130.65-a (fourth degree), 130.66 (third degree) 130.67 (second degree), 130.70 (first degree). The physical action in aggravated sexual abuse is insertion of a finger or foreign object in the vagina, urethra, penis or rectum of another person. For aggravated sexual abuse in the first and second degree and in certain categories of aggravated sexual abuse in the third [Sub. 2] and fourth [Sub. 1(b)] degrees, such physical action must cause physical injury to the victim. Aggravated sexual abuse in the third [Sub.1] and fourth degree [Sub. 1(a)] contain provisions that make it a crime to insert foreign objects without the need for a finding of physical injury by the victim. Whenever a finger in involved in the action, there must be proof of physical injury by the victim.

The statutes provide that conduct performed for a valid medical purpose does not constitute aggravated sexual abuse.

The term "foreign object" is defined in PL § 130.00(9) as any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.

This leads to the question of what is meant by the requirement that there be physical injury. PL § 10.00(9) defines "physical injury" as impairment of physical condition or substantial pain. This is similar to the physical impairment aspect of the maltreatment definition. However, unlike the maltreatment definition, imminent danger of impairment is not part of the definition of "physical injury" under the PL. Therefore, if the insertion of a finger does not cause some actual impairment, it will not be aggravated sexual abuse; insertion creating imminent danger of impairment does not meet the PL definition.

The activities involved in the offense of aggravated sexual abuse include the following circumstances:

1. the insertion occurs as a result of forcible compulsion;
2. the victim is incapable of consent due to being physically helpless;
3. the victim is less than 11 years old;

4. the victim is incapable of consent by reason of being mentally disabled or mentally incapacitated; or
5. the victim is incapable of consent by reason other than being less than 17 years old.

Items 1 through 3 above are aggravated sexual abuse in the first degree if the object is a foreign object and there is physical injury. Items 1 through 3 above are aggravated sexual abuse in the second degree if the object is a finger and there is physical injury. Items 1 through 3 above are aggravated sexual abuse in the third degree if the object was a foreign object and there is no proof of physical injury, and item 4 is aggravated sexual abuse in the third degree where the object is a foreign object and there is physical injury. Item 5 above is aggravated sexual abuse in the fourth degree where the object is a foreign object or a finger; if a foreign object, there is no need to prove physical injury but if the object was a finger, physical injury to the victim must be proven.

Sexual Misconduct is defined in PL § 130.20. The offense consists of one of the following:

1. the actor engages in sexual intercourse with a victim without the victim's consent;
2. the actor engages in oral sexual conduct or anal sexual conduct with a victim without the victim's consent; or
3. the actor engages in sexual conduct with an animal or dead human body.

This offense is most relevant to sex abuse for child protective purposes in regard to situations where the allegation is that the subject of the report allowed sexual abuse to occur. It becomes relevant in situations where two children have engaged in sexual intercourse, oral sexual conduct or anal sexual conduct and, because of the age-related provisions of the rape and criminal sexual act definitions discussed above, the conduct does not actually fall within any of the definitions of those offenses. The sexual misconduct statute makes this activity a form of sex offense. Therefore, allowing it to occur makes a subject culpable for sex abuse, as discussed below in the "Allowing Sex Abuse to Occur" section of this memorandum.

Beyond that, the commentaries on the PL suggest that, as the three degrees of rape and criminal sexual conduct are all felonies and sexual misconduct is a misdemeanor, sexual misconduct could be used for plea-bargaining purposes. <u>While this makes the offense potentially useful in the criminal justice system, it has no unique relevance in the child protective system.</u> Item 3 does address a topic not found elsewhere in the sex offense statutes but, since the "victim" would not be a child, this item has no real applicability to the child protective system.

Course of Sexual Conduct Against a Child is defined in PL §§ 130.75 and 130.80. Course of sexual conduct against a child incorporates multiple acts that individually would satisfy the definition of sex abuse for child protective purposes. Sexual conduct is defined in PL § 130.00(10) to mean sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact or sexual contact.

The specific actions that constitute the crime of course of sexual conduct against a child are that over a period of less than 3 months:

1. the actor engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, and the victim is less than 11 years old;
2. the actor is 18 years of age or older and engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual abuse, with a victim less than that 13 years of age;

3. the actor engages in two or more acts of sexual conduct with a victim who is less than 11 years of age; or
4. the actor is 18 years of age or older and engages in two or more acts of sexual conduct with a victim who is less than 13 years of age.

Items 1 and 2 above are course of sexual conduct against a child in the first degree and items 3 and 4 above are course of sexual conduct against a child in the second degree.

Forcible Touching is defined in PL § 130.52. It is a misdemeanor. The crime of forcible touching consists of the following:

1. the actor intentionally, and for no legitimate purpose, touches the sexual or other intimate parts of the victim for the purpose of degrading or abusing such person or for the purpose of gratifying the actor's sexual desire.

Forcible touching includes squeezing, grabbing or pinching. Courts have held that the buttock is an intimate part. Forcible touching does not require that the victim be injured in any way or suffer any degree of harm. The actor need not actually experience any sexual gratification. There is no age limitation in this statute.

Persistent Sexual Abuse is defined in PL § 130.53. Persistent sexual abuse consists of the following:

1. the actor commits the crime of either forcible touching (130.52); sexual abuse in the third degree (130.55) or sexual abuse in the second degree (130.60); and
2. within the previous 10 years of the crimes referenced above, excluding any time during which such person was incarcerated for any reason, the actor has been convicted two or more times in separate criminal transactions for which a sentence was imposed on separate occasions, of forcible touching (130.52); sexual abuse in the third degree (130.55); sexual abuse in the second degree (130.60) or any offense defined in Article 130 of the PL of which the commission or attempted commission is a felony

The criminal justice impact of the crime of persistent sexual abuse is an increase in the punishment the actor may face for the commission of the subsequent criminal act given the actor's past history. The underlying subsequent crimes referenced in the persistent sexual abuse statute are misdemeanors. The crime of persistent sexual abuse is a felony. The crime of persistent sexual abuse does not contain an age limitation. It would be up to child protective to apply the facts of its case against the statutory elements of the crime of persistent sexual abuse. It should be noted that the prior criminal convictions need not involve a child victim.

Female Genital Mutilation is defined in PL § 130.85. The offense of female genital mutilation consists of the following:

1. the actor knowingly circumcises, excises or infibulates the whole or part of the labia majora or labia minor or clitoris of a victim who has not reached the age of 18; or
2. being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than 18 years of age, the actor knowingly consents to the circumcision, excision or infibulation of whole or part of the victim's labia majora or labia minor or clitoris.

The act of circumcision, excision or infibulation is not a violation of PL § 130.85 where:

1. the act is necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner; or

2. such act is performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife or person in training to become such a practitioner or midwife.

For the purpose of item 1 immediately above dealing with circumstances when there is not a violation of the statute, the statute provides that no account shall be taken of the effect on the person on whom the procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual. This basically means that, with regard to when there is a violation of this statute, there is no defense or exception because of the religious or cultural belief of the actor or victim.

Facilitating a Sex Offense with a Controlled Substance in defined in PL § 130.90. The offense of facilitating a sex offense with a controlled substance consists of the following:

1. the actor knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain; **and**
2. the actor administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to the victim without the victim's consent; and with the intent to commit against the victim conduct constituting felony defined in Article 130 of the PL.
3. the actor commits or attempts to commit such conduct that is a felony under Article 130 of the PL.

The offense addresses situations where the actor attempts to commit a felony under Article 130 of the PL. With the exception of sexual misconduct, forcible touching, sex abuse in the third degree and sex abuse in the second degree, all of the other crimes set forth in Article 130 of the PL are felonies. Please note that the crime of facilitating a sex offense does not reference the age of the victim. Also, for an action to be a sex offense for child protective purposes, the actor must commit the offense.

Sexually Motivated Felony is defined in PL § 130.91. A person commits a sexually motivated felony when the actor commits a specified offense for the purpose, in whole or in substantial part, for the actor's own direct sexual gratification.

For the purposes of this section, a specified offense includes: assault (first and second degree), gang assault (first and second degree), stalking (first degree), strangulation (second and first degree), manslaughter (first and second degree), murder (first and second degree), aggravated murder, kidnapping (first and second degree), burglary (first, second and third degree), arson (first and second degree), robbery (first, second and third degree), promoting prostitution (first and second degree), compelling prostitution, disseminating indecent material to minors (first degree), use of a child in a sexual performance, promoting an obscene sexual performance by a child, promoting sexual performance by a child, or any attempt or conspiracy to commit any of the foregoing crimes.

As noted from the list of specified offenses, most do not have a sexual element attached to the underlying offense. A key element to the offense of sexually motivated felony is that the actor committed the underlying specified offense wholly or in substantial part for the actor's own direct sexual gratification. The crime of sexually motivated felony applies where the actor attempts or conspires to commit the specified offense. As previously noted, for a child protection sex offense, the act must have been committed.

Predatory Sexual Assault is defined in PL § 130.95. Predatory sexual assault involves the circumstance where the actor commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree; and either:

1. in the course of the commission of the crime or the immediate flight there from, the actor either:

   a) causes serious physical injury to the victim of the crime; or

   b) the actor uses or threatens the immediate use of a dangerous instrument; or
2. the actor has engaged in conduct consisting of the crime of rape in the first degree, criminal sexual contact in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree against one or more additional persons; or
3. the actor has previously been convicted of a felony defined in Article 130 of the PL or incest (PL § 255.25) or use of a child in a sexual performance (PL § 263.05).

Any of the underlying offenses referenced above involving a child satisfy the definition of sex abuse for child protective purposes. The primary consequence of the offense of predatory sexual assault is to increase the criminal penalties to which the actor may be subjected.

Predatory Sexual Assault Against a Child is defined in PL § 130.96. Predatory sexual assault against a child consists of the following:

1. the actor is 18 years of age or older and commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree or course of sexual conduct against a child in the first degree; and
2. the victim is less than 13 years of age.

Where the underlying crime involved a child under 11 years of age, that crime would in and of itself satisfy the definition of sex abuse for child protective purposes. Again, the primary significance of this offense is to increase the criminal penalties to which the actor may be subjected.

Promoting Prostitution – PL §§ 230.25, 230.30 and 230.32

Prostitution is defined in PL § 230.00 as engaging, agreeing to engage or offering to engage in sexual conduct with another person for money (a fee). The child protective statutes include as types of sex abuse three offenses related to promotion of prostitution, those being PL §§ 230.25 (third degree), 230.30 (second degree) and 230.32 (first degree). The activity involved in promoting prostitution is advancing or profiting from prostitution. Advancing prostitution is defined in PL § 230.15(1) as knowingly causing or aiding a person to engage in prostitution, procuring or soliciting patrons for prostitution, providing persons or premises for prostitution purposes, operating a house of prostitution or prostitution enterprise, or any other conduct designed to institute, aid or facilitate an act of prostitution. Profiting from prostitution is defined in PL § 230.15(2) as accepting or receiving money or property as the proceeds of prostitution where the recipient of the proceeds is not the prostitute.

The specific actions that fall within the three statutes are advancing or profiting from prostitution:

1. where the prostitute is a person less than 19 years old;
2. where the prostitute has been compelled to engage in prostitution by force or intimidation; or

3. where the person advancing or profiting does so by managing, supervising, controlling or owning a prostitution business, house of prostitution, or a business that sells travel-related services where the purpose of the travel is to patronize a prostitute.

Where the prostitute is less than 11 years old, the offense is promoting prostitution in the first degree. Where the prostitute is at least 11 years old but less than 16 years old, the offense is promoting prostitution in the second degree. Where the prostitute is at least 16 years old but under 19 years old, the offense is promoting prostitution in the third degree. In addition, item 2 above is promoting prostitution in the second degree and item 3 is promoting prostitution in the third degree. As a practical matter, the relevant criteria for child protective purposes will be the age criteria; so long as the child is under 19 years old, a subject who advances or profits from the child's prostitution will have committed one of the promoting prostitution offenses, and since a child is defined as a person under the age of 18, all children will fall within the category of persons under the age of 19.

Incest – PL §§ 255.25, 255.26 and 255.27

Incest is defined in PL §§ 255.25, 255.26 and 255.27. A key element of the offense of incest is that the actor knows that the actor is related to the victim, whether through marriage or not, as an ancestor (i.e., parent, grand-parent, etc.), descendant (i.e., child, grand-child, etc.), sibling of the whole or half blood, aunt, uncle, niece or nephew.

The specific actions that fall within the three statutes that address incest, in addition to the actor's knowledge of being related to the victim, are:

1. the actor marries the victim;
2. the actor engages in sexual intercourse, oral sexual conduct or anal sexual conduct with the victim;
3. the actor commits the crime of rape in the second degree or commits the crime of criminal sexual act in the second against the victim; or
4. the actor commits the crime of rape in the first degree, as defined in Sub. 3 or 4 of PL § 130.35 or commits the crime of criminal sexual act in the first degree, as defined in Sub. 3 or 4 of PL § 130.50.

Items 1 and 2 above are incest in the third degree. Item 3 above is incest in the second degree and item 4 above is incest in the first degree. Incest in the first degree applies when the victim is less than 11 years old or when the victim is less than 13 years old and the actor is 18 years or older. Incest in the second degree includes when the victim is less than 15 years of age and the actor is 18 years of older.

Therefore, where the subject engages in sexual intercourse, oral sexual conduct or anal sexual conduct with the actor's child, grand-child, niece, nephew, etc., it would constitute incest regardless of the age of the child. If the child is under the age of 18 and thus within the jurisdiction of the child protective system, the incest would also be sex abuse for child protective purposes. Accordingly, a parent who had sexual intercourse, oral sexual conduct or anal sexual conduct with the actor's 17 year old child would have committed incest and thus, from a child protective perspective, sex abuse, even though this would not be a sex offense under the rape or criminal sexual conduct definitions (because the victim is 17 years old).

There are two things to note here. First, the sexual activity involved in incest is sexual intercourse, oral sexual conduct or anal sexual conduct, as previously defined. The sex offense of sexual abuse is not a basis for a finding of incest. Accordingly, a parent who has sexual contact

with his or her 17 year old child (but not sexual intercourse, oral sexual conduct or anal sexual conduct) would have committed neither incest nor a sex offense.

The second item of interest is that a finding of incest can also be based on marriage occurring between the actor and any of the persons listed. Therefore, a person who marries his or her minor child, grand-child, niece, nephew or sibling would have committed incest and, for child protective purposes, sex abuse, by the act of marriage; no sexual activity would be necessary for incest to have been committed. We thus have the interesting possibility of sex abuse occurring from a child protective standpoint without any sexual activity of any sort having taken place.

Sexual Performance by a Child – Article 263 of the PL

Article 263 of the PL defines offenses related to sexual performance by a child. Sexual performance is defined in PL § 263.00(1) as any performance or part of a performance which, for the crime of possessing a sexual performance by a child, includes sexual conduct by a child less than 16 years of age or, for the purpose of the crimes of use of a child in a sexual performance or promoting a sexual performance, includes sexual conduct by a child less than 17 years of age (see the note below in regard to the age criteria). Performance is defined in PL § 263.00(4) as any play, motion picture, photograph or dance or any other visual representation exhibited before an audience. Sexual conduct is defined in PL § 263.00(3) as actual or simulated sexual intercourse, oral sexual conduct, anal sexual conduct, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals. Simulated is defined in PL § 263.00(6) as the explicit depiction of any conduct listed in PL § 263.00(3) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals or buttocks.

It is important to note here that, although the PL definitions, at most, make the offenses applicable only to children under the age of 17, FCA § 1012(e)(iii)(b) provides that the age requirement for application of Article 263 of the PL does not apply to child protective proceedings. This means that, for child protective purposes, use of any child in a sexual performance will be a form of sex abuse, even if the child is 17 years old.

The term "obscene sexual performance" is defined in PL § 263.00(2). Obscene sexual performance means any performance which, for the purpose of the crime of possessing an obscene sexual performance by a child, includes sexual conduct by a child less than 16 years or age in any material which is obscene or, for the purpose of the crime of promoting an obscene performance by a child, includes sexual conduct by a child who is less than 17 years of age in any material which is obscene. The term “obscene” is defined in PL § 235.00 and refers generally average to material (a) whose predominant appeal is to the prurient interest in sex, (b) which depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion, or lewd exhibition of the genitals, and (c) which, considered as a whole, lacks serious literary, artistic, political, and scientific value. While the distinction between a sexual performance and an obscene sexual performance is an interesting academic issue, it is not a topic that needs to be addressed here, as the definition of sexual performance will, for practical purposes, encompass the activity about which we would be concerned for child protective purposes. Whether some of that activity is also "obscene" is relevant for determining exactly what criminal offenses may have been committed but it is not especially significant for our purposes.

The actions that fall within Article 263 are the use of a child in a sexual performance and promoting a sexual performance or an obscene sexual performance by a child. The prohibited activities are where, knowing the character and content thereof:

1. the actor produces, directs or promotes any performance which includes sexual conduct by a victim less than 17 years of age;
2. the actor produces, directs or promotes an obscene performance which includes sexual conduct by a victim less than 17 years of age
3. the actor employs, authorizes or induces a victim less than 17 years of age to engage in a sexual performance;
4. a parent, guardian or custodian of a child consents to the participation of a victim less than 17 years of age in a sexual performance; or
5. the actor facilitates a sexual performance by a victim less than 17 years of age with a controlled substance or alcohol.

Item 1 is a violation of PL § 263.15. Item 2 is a violation of PL § 263.10. Items 3 and 4 are violations of PL § 263.05. Item 5 above is a violation of PL § 263.30.

Promoting a sexual performance is defined in PL § 263.00(5) as procuring, manufacturing, selling, or otherwise distributing or disseminating a performance. PL §§ 263.10 and 263.15 also include within the offense of promoting a performance producing or directing any performance. PL § 263.05 includes within the term "use" of a child in a sexual performance employing, authorizing or inducing a child to engage in a sexual performance. Facilitating a sexual performance by a child with a controlled substance or alcohol involves what the title of the crime states: the actor possesses and administers a controlled substance or provides alcohol to a victim under the age of 17 with the intent to commit one of the acts outlined in items 1-4 above and the actor commits or attempts to commit such act.

What this amounts to is that subjects who induce a child to engage in a sexual performance, use a child in such a performance, record such a performance or distribute the record of such a performance will violate the statutes. Case law has held that taking photographs of children engaging in the listed activities falls within the meaning of "using" a child in a sexual performance. Also, the definition of promoting a performance includes procuring the performance, and courts have held that obtaining a copy of a record of a sexual performance is a form of procuring a performance. Therefore, a subject who did not convince the child to engage in the sexual performance, who did not him or herself direct or record the performance, and who did not condone the child's participation in the performance, would still violate the statute if the subject obtained a copy of the performance for his or her own use. (A subject who obtained a copy solely for the purpose of turning it over to the authorities for criminal investigation or prosecution would presumably not be considered to be promoting a sexual performance.)

There is one issue here that merits some further discussion. There must be some sexual conduct, as defined above, involved in the performance. This means that not every nude photograph of a child will constitute using a child in a sexual performance; for example, photos of a baby in a bathtub are not likely to fall within the definition of sexual conduct. However, one form of sexual conduct is lewd exhibition of the genitals, so it is possible for a nude photograph, in and of itself, to constitute a sexual performance. The issue is what constitutes "lewd" exhibition, and that will have to be evaluated in light of the circumstances of each case.

15. Allowing sex abuse to occur

In accordance with FCA § 1012(e)(iii), it is also a form of sex abuse for child protective purposes for a subject to allow any of the crimes described and discussed in Section I to be committed. Although the FCA does not specify what is meant by "allowing" sex abuse to occur, the cases and commentaries agree that a subject does not "allow" sex abuse to occur simply by virtue of being a parent, guardian or custodian.

The basis for finding that a subject allowed sex abuse to occur for child protective purposes must involve the following:

1. one of the forms of **sexual abuse** described above **must have occurred** (meaning that all of the elements set forth for either rape, criminal sexual conduct, etc. must be met); **and**
2. the **subject knew or had reason to know** that sexual abuse of the child is occurring or was likely to occur; **and**
3. the **subject failed** to take adequate; **and**
4. the sexual abuse actually occurred, continued or reoccurred after the subject knew or should have known of the abuse.

With regard to the issue of the failure to take adequate measures referenced in item 3 above, when considering whether a subject has taken “adequate measures” to prevent the sex abuse from occurring or reoccurring the following should be considered:

- Age of the child or children involved
- Any special needs of children involved
- Level of supervision possible and/or appropriate for the child
- What a reasonable person would have done in a similar situation

The discussion below will provide further guidance on the elements noted above for a finding that a parent or person legally responsible allowed the sex abuse of his or her child.

It is worth emphasizing that there is one very basic and important point that must be applied in determining whether a subject can be said to have allowed sex abuse to occur; **there must be some underlying sex abuse**. If the underlying activity is not sex abuse in one or more of the forms described and discussed above, the subject cannot have allowed sex abuse to occur. Thus, where the subject becomes aware that sex abuse has not occurred but is likely to occur, the subject must take actions to prevent the sex abuse to occur. In that circumstance, there can only be an indication for sex abuse if some form of sex abuse does actually subsequently occur. Similarly, where the subject becomes aware of the sex abuse after it occurred, the obligation of the subject is to take action to prevent the continuation or recurrence of the sex abuse. In that circumstance, there can only be an indication for sex abuse if some form of sex abuse actually continues or recurs. If the sex abuse never happens, or does not continue or recur, it is possible that there has still been some form of maltreatment (e.g., a lack of proper supervision), but it would not be sex abuse.

If there has been some underlying sex abuse, the subject must then either know that the sex abuse is occurring, likely to occur or has occurred or must have reason to know; the knowledge or reason to have knowledge of the underlying sex abuse creates the obligation for the subject to act to prevent the sex abuse from occurring, continuing or recurring. Where the subject does not take reasonable and appropriate action based upon his or her knowledge of the sex abuse, or fails to take reasonable and appropriate action while having reason to know of the sex abuse, and the sex abuse occurs, continues or recurs, the subject has allowed sex abuse to occur.

The responsibility to take some action to prevent the sex abuse from occurring or recurring is to take reasonable and appropriate action under the circumstances. The obligation is not to guarantee or assure that the sex abuse does not occur or recur. What constitutes reasonable and appropriate action will depend on the totality of the circumstances, taking into consideration factors such as: the age and capabilities of the child; any special needs the child may have; the level of supervision that is possible and appropriate for the child; the exact nature and reliability of the information possessed by the subject; what information it would be reasonable to expect the subject to know or infer under the circumstances; and what a reasonable person would be expected to do under the circumstances. If the subject of the report has clearly taken extensive measures to prevent the sex abuse from occurring or recurring, but the sex abuse nevertheless occurs or recurs, then the subject has not allowed sex abuse to occur. Where the subject, having knowledge or reason to know of the sex abuse, takes no action to prevent it, then the subject has allowed the sex abuse to occur. The middle ground between those two circumstances (which will be the majority of the cases) is where the subject has taken some action or actions, and the action or actions did not prevent the sex abuse from occurring or recurring. In that situation, it will be necessary to assess the actions taken by the subject to determine if those actions were reasonable and appropriate. If so, then the subject has not allowed sex abuse to occur.

In that regard, a common circumstance where the issue of allowing sex abuse to occur becomes relevant is where the subject's teenage child is involved in some form of sexual activity with another teenager where the children involved are close in age. All of the discussion above is relevant to evaluating such cases, particularly the issue of the level of supervision that is both reasonably possible and appropriate under the circumstances given the child's age and level of maturity. It is also important to note that a subject assisting a child in obtaining sexual or reproductive health care services, or a subject's knowledge of and/or support for, a child obtaining sexual or reproductive health care services, does not in and of itself mean that a report should be indicated. For example, where the parent or person legally responsible assists the child to secure reproductive health services through Planned Parenthood or encourages or assists in the testing of the child for sexually transmitted diseases, such action in isolation does not prove that the parent or person legally responsible allowed the child to be sexually abused. As with any other factor, the totality of the circumstances must be evaluated to determine whether such action was reasonable and appropriate under the circumstances.

It is also important to note that the indication for allowing sex abuse to occur is for sex abuse; it is a form of abuse and is **not** maltreatment. This is because an indication for allowing sex abuse to occur is based on the sex abuse definition in FCA § 1012(e). It is not uncommon for cases of allowing sex abuse to occur to be indicated as maltreatment. Such indications create a problem because, if the case is handled as maltreatment, the indication must be based on finding evidence of the elements of maltreatment. This means that impairment or imminent danger of impairment must be shown, as well as a causal connection between the subject's lack of action and the underlying abuse. Both of these may be difficult to do in some situations, so it is best to treat cases of allowing sex abuse to occur as what they are, which is a form of sex abuse.

The above is intended to provide a reasonably comprehensive discussion of what constitutes sex abuse for child protective purposes, and is intended for general informational purposes.

16. Malnutrition / Failure-to-thrive

These are two distinct conditions and should be assessed separately. Malnutrition is failure to receive adequate nourishment. It may be caused by inadequate diet, lack of food or insufficient amounts of needed vitamins and minerals. Non-organic failure-to-thrive is a condition in which

an infant's weight, height and motor development fall significantly below age-appropriate ranges with no medical or organic cause. The death of the child is the end result in extreme cases. Non-organic failure to thrive can result in continued growth retardation as well as cognitive and psychological problems. Even with treatment, the long-term consequences can include continued growth problems, diminished cognitive abilities, retardation, and socio-emotional deficits such as poor impulse control.*

* Goldman, J., Salus, M., Wolcott, D., Kennedy, K., A *Coordinated Response to Child Abuse and Neglect: The Foundation for Practice*, DHHS, Office of Child Abuse and Neglect, 2003, p. 36

To obtain an accurate diagnosis, it is essential that a physician evaluate a child who is suspected to be suffering from failure-to-thrive or malnutrition. The family history should be searched for diseases which might affect growth, the physical examination of the child must be detailed and thorough, bone x-rays should be obtained and specialized laboratory tests performed. Nelson's Textbook of Pediatrics (Sixteenth Edition) recommends that most children with nonorganic failure to thrive should be hospitalized and given unlimited feedings of a diet appropriate for age for a minimum of one week. The key consideration is whether the child who is unable to gain weight at home, can gain weight rapidly and easily in the hospital.

It should be underlined, however, the diagnosis is complex and requires a skilled physician.

► *Immediate considerations*

- Was a complete and detailed physical examination of the child conducted and what were the results?
- Were x-rays and laboratory tests obtained and what were the results?
- What was the parent's/other person legally responsible's explanation for the child's condition. Good note taking is essential. Use direct quotes.
- Were the interactions of the parent/other person legally responsible and child observed and what were the findings?
- Was a discussion held with the physician and other medical professionals concerning their diagnosis and explanation of the child's condition? What were the results? Identify professionals by name, professional title, and address.

17. Inadequate food / clothing / shelter

An actual failure by the parent or other person legally responsible to supply adequate food, clothing or shelter, although financially able to do so or offered financial or other reasonable means to do so, is a form of child maltreatment.

Food

Nutrients such as vitamins, minerals and proteins are as essential for growth in children as is an adequate intake of calories.

Poor growth of a child is the primary reason for suspecting inadequate food intake and nutrition. This may be due to organic or environmental conditions. Anemia, in which there is a reduction in the number of red blood corpuscles or amount of hemoglobin or both, may be characterized by paleness and lack of vitality. Nutritional anemia is due to inadequate oral intake of iron-containing foods such as eggs and meat. Medical examination is necessary to determine the nature and extent of the injury to the child.

Clothing

A child needs basic clothing items such as underwear, shoes and appropriate outer clothes to provide protection from weather conditions. To support adequate hygiene, clothing must be reasonably clean so that there is freedom from disease and infection.

Shelter

Children require shelter which provides basic safety, sanitation, and heat. A family may live in substandard housing because it is unable to find or afford better conditions. Such things as broken furniture, overcrowding, and messiness are generally not grounds for protective intervention by themselves. If the condition represents a health or safety hazard to the child which the parent or other person legally responsible is unable or unwilling to correct or take reasonable steps to correct, protective intervention is warranted.

► *Immediate considerations*

- What is the condition of the child? Has the child been harmed or is he in imminent danger of harm?
- What was observed to be inadequate in the provision of food, clothing or shelter?
- What is the parent's explanation for these conditions? Good note taking is essential. Use direct quotes.
- To what degree has the parent or other person legally responsible sought to provide adequate food, clothing or shelter for the child?
- Did the parent or other person legally responsible fail to provide adequate food, clothing or shelter despite financial ability or other reasonable means to do so?

18. Inadequate guardianship

This term applies to the overall quality of care the parent or other person legally responsible provides the child(ren). Guardianship is inadequate if it fails to meet a minimum standard of care for the child within commonly accepted societal norms. Inadequate guardianship results in actual physical or developmental harm to the child, or imminent danger of such harm. Inadequate guardianship includes, but is not limited to:

- Continually allowing a child to remain away from home for extended periods of time without knowledge of the child's whereabouts.
- Making demands beyond the child(ren)'s physical or emotional abilities which results in harm or imminent danger of harm to the child.
- Exploitation of the child(ren) by a spouse in marital or custodial disagreements, or litigation disputes which results in specific harm or imminent danger of harm to the child. Litigation itself is not sufficient to show inadequate guardianship (see **Emotional Neglect**).
- Exposing, exploiting or encouraging the child to participate in illegal and/or immoral acts.
- Leaving a child(ren) in the care of another person without establishing a plan for the provision of adequate food, clothing, education or medical care.
- Providing constant surveillance of the child and limiting activities to the extent these actions result in harm or imminent danger of harm to the child.

► *Immediate considerations*

— What is the condition of the child(ren)? Has the child been harmed or is he or she in imminent danger of harm?

— What is the age of the child and what capacity does the child have to care for himself/herself?

— What is the capacity of the parent or other person legally responsible to provide care for the child?

— What are the parent's/other person legally responsible's current child care practices?

— Do these practices meet a reasonable, minimum standard of care for the child?

19. Lack of supervision

Lack of supervision is evident if a child is alone or not competently attended to for any period of time to the extent that his or her need for adequate care goes unnoticed or unmet, and the child is harmed or exposed to hazards that create an imminent danger of harm.

Parents and other persons legally responsible have a responsibility to supervise their children or arrange for proper competent supervision. Proper supervision means that the child's minimum needs for adequate food, clothing, shelter, health, and safety are met. The need for supervision varies with the age and developmental stage of the child.

An infant (0 to 24 months) has some mobility but cannot meet any needs of his/her own and must be under the constant care of a competent, mature person; toddlers (age 2 to 4) need broader space to explore. Toddlers can walk, climb, have no sense of danger and must be closely watched to keep safe from harm. A preschool child (age 4 to 6) can play independently but cannot be responsible to meet basic needs for adequate food, clothing, shelter, health, and safety.

School-aged children (age 6 to 12 years) may not be ready for the responsibility of being on their own even for short periods of time. Even children over the age of 12 may lack the physical, mental, or emotional capacity to be left unsupervised for longer, or possibly even shorter, periods of time. A child who cannot be responsible for meeting his or her own needs cannot be a competent caretaker for other children.

Each situation in which there is an allegation of lack of supervision must be carefully assessed to determine the basic needs of the child(ren), the child's capacity to meet those needs on his/her

own, and the role of the parent or other person legally responsible in insuring that the child's needs are adequately met.

► *Immediate considerations*

- What is the condition of the child(ren)? Has the child been harmed or is he in imminent danger of harm?
- What is the age of the child and what capacity does the child have to care for himself/herself?
- What basic needs of the child have gone unnoticed or unmet?
- At what time of day did the child's needs go unnoticed or unmet and how long did the situation last?
- What was the parent's/other person legally responsible's explanation for this situation? Good note taking is essential. Use direct quotes.
- What degree of planning for adequate child care has the parent shown?
- Is the caretaker mature and competent to provide a minimum degree of care, given the age and circumstances of the child(ren)?
- Are there environmental/home factors that exist that may elevate the level of supervision that is required; e.g., proximity to a highway, a swimming pool, firearms, etc.

20. Abandonment

Abandonment means that the parent or other person legally responsible for the care of a child under 18 years shows by his or her actions an intent to forgo parental rights and obligations (FCA §1012 and SSL §384-b(5)).

The assessment of abandonment depends on gathering and analyzing the facts and related history to determine whether there is some credible evidence that the parent or other person legally responsible intends to give up parental responsibility totally and completely. The **intent** of the parent as shown by his or her **actions** is the key variable in assessing whether abandonment has occurred.

In cases in which an allegation of abandonment arises where a parent or other person legally responsible has left a child in someone else's care, the following should be considered: whether expectations for the duration of child care were reasonable, whether parental failure to return or communicate was due to acts of the caregiver which prevented or discouraged parental contact, and whether the parent's failure to return or communicate occurs despite parental ability to return or communicate.

The New York Abandoned Infant Protection Act (AIPA) was created in Chapter 156 of the Laws of 2000 and was later modified in Chapter 447 of the Laws of 2010. It established the Abandoned Infant Information Helpline. Most importantly, the Act removes criminal liability when a person abandons an infant who is not more than 30 days old in a safe manner, in accordance with Penal Law §§ 260.00(2) and 260.10(3). These provisions apply when the parent, guardian, or other legally responsible person leaves the infant with an appropriate person or leaves the infant in a suitable location and immediately notifies an appropriate person of the child's location. The person who is abandoning the infant is not required to identify himself or herself.

This act did not amend child protective statutes, mandated reporter requirements, or the standards for the termination of parental rights in either the Social Services Law or the Family Court Act. Cases that fall within the AIPA must still be reported to the Statewide Central Register

of Child Abuse and Maltreatment if the parent is identified, investigated by Child Protective Services, indicated if the parent is found to have abandoned the infant, and referred to Family Court for intervention when appropriate.

► *Immediate considerations*

- What actions were taken by the parent/other person legally responsible which indicate that the parent/other person legally responsible wanted to give up responsibility and obligations for the child?
- What reasons did the parent/other person legally responsible give for taking these actions?
- Did the parent/other person legally responsible have an ability to return to or communicate with the child?
- Was the parent or other person legally responsible prevented or discouraged from returning to or communicating with the child?
- Did the parent/other person legally responsible fail to return or communicate despite an ability to do so?
- Were the parent's/other person legally responsible's identity or whereabouts unknown?

21. Dead on arrival (DOA) / Fatality

This allegation is registered when there is reasonable cause to suspect that the actions or inactions of a parent or person legally responsible for the care of a child contributed to the death of the child. The death of an otherwise healthy child where there is no plausible explanation for the death provides reasonable cause to suspect abuse. An allegation of DOA/Fatality cannot stand alone; there must be another allegation with it to show how the child died (e.g., Inadequate Guardianship, Lack of Supervision, etc.)

► *Immediate considerations*

- Where was the child found? What was the condition of the child's immediate surroundings?
- When was the last time the child was observed alive and by whom?
- Who was responsible for, or had access to, the child at the time of death?
- If the child died in a bed, what was the sleeping arrangement? If the child died in a crib, what else was in the crib?
- Did the child have a preexisting medical condition that contributed to the death?
- What was the condition of the child's body? Did the child have any visible injuries?

For additional information on what to consider when the allegation is DOA/Fatality, see **Chapter 11,** *Child Fatality Reviews***.**

22. Other

This category is used at intake at the SCR primarily for two types of circumstances: 1) Court ordered investigations; and 2) a person legally responsible for a child is a registered, convicted or recently arrested child sex offender.

FCA §1034 allows a Family Court judge to order an investigation in a proceeding under Article 10 of the FCA or in order to determine whether a proceeding under Article 10 should be initiated. Where a court orders an investigation and there is some other applicable allegation type as a

basis for accepting the report (e.g., allegations of excessive corporal punishment or inadequate guardianship), a report will be registered at intake using the appropriate allegation type. Where there is not clearly an applicable allegation type, the SCR will register the report under the category of "other". If an investigation of a report pursuant to FCA §1034 where the listed allegation is "other" results in a finding of some credible evidence of abuse or maltreatment, the report should not be substantiated as "Other"; rather, the appropriate allegation type(s) should be selected, based on the particular facts and circumstances that exist in the family that has been investigated that show that abuse and/or maltreatment have occurred (please refer to the pertinent allegation type for guidance concerning criteria and considerations). The fact that a court ordered an investigation is not, in and of itself, a sufficient basis to indicate a report, so a report should never be indicated on that basis.

The SCR will accept reports where the only allegation is that a person who lives in the home, or is in the home with sufficient regularity and has sufficient contact with the child to be considered a person legally responsible, is on the Sex Offender Registry, has been convicted of a sex offense against a child, or has recently been arrested for a sex offense against a child. The purpose of accepting such reports is concern for the possibility that the child may have been sexually abused or exposed to other inappropriate behavior by the sex offender. While a report will be accepted solely based upon such an allegation, that allegation alone is not sufficient in and of itself to support a determination that a child has been sexually abused. Such an allegation is sufficient to constitute reasonable cause to suspect that the child is at risk of being sexually abused, thereby warranting a report to the SCR and the commencement of a child protective investigation.

A thorough investigation should be conducted to determine whether the registered, convicted or recently arrested child sex offender has committed a sex offense or engaged in any other form of abuse or maltreatment against any child living in the home, as well as a full assessment of the appropriateness of the parenting of all adults in the home. Even if there is no credible evidence of child sexual abuse, there may or may not be other elements of harm or imminent risk of harm, including emotional harm, caused in part or whole by the presence and the actions of the registered, convicted or recently arrested child sex offender. If, however, at the end of the investigation, the only information found is that there is a registered, convicted or recently arrested sex offender who is a person legally responsible for the child, the report cannot be indicated solely on that basis. The report may be indicated only if there is some credible evidence of some form of abuse or maltreatment. If that is the case, the report should be indicated under the applicable allegation type (e.g., sexual abuse, lack of supervision) and not for the category of "other".

► *Immediate considerations*

(The literature is not entirely consistent as to the likelihood and risk factors associated with whether a child sex offender is likely to reoffend; however, what follows are some of the considerations concerning both the offending and non-offending parent that may place children at greater or lesser risk.)

- Does the registered, convicted or recently arrested child sex offender have unsupervised time with the children?
- Does the non-offending parent supervise any child's intimate tasks (e.g., bathing) and consciously attempt to prevent opportunity for the registered, convicted or recently arrested sex offender to have tempting or opportunistic access to the children?

- Even in supervised settings, does the registered, convicted, or recently arrested sex offender engage in the following types of physical contact with the children: hugging; wrestling; tickling; stroking their hair; having them sit on his/her lap? (Note: these otherwise normal and innocent forms of contact with a child may not be appropriate if a person is a child sex offender)
- Does the registered, convicted, or recently arrested sex offender give undue attention or gifts to a child?
- Are there children in the home that are the target age and sex of the child(ren) who was sexually abused or alleged to have been sexually abused by the registered, convicted, or recently arrested child sex offender;
- Are there children in the home who have low self-esteem, low self-confidence, or are lonely, quiet and/or passive?

F. Standards of evidence for each child protective process stage

The standards of evidence differ with each step in the child protective process. Below is a chart that briefly outlines these standards.

CHILD PROTECTIVE PROCESS	STANDARDS
1. Investigation/Determinationof Abuse / Maltreatment	1. The standard of proof used to determine whether to indicate or unfound a report of suspected abuse or maltreatment is some credible evidence. Some credible evidence is defined as evidence that is worthy of being believed. [See 18 NYCRR 434.10(h)]
2. Administrative Fair Hearing	2. The subject of a report has the right to a fair hearing to determine whether the record of the report in the State Central Register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with Title 6, Article 6 of the Social Services Law. The standard of evidence for maintaining such records is a fair preponderance of evidence [see 97 LCM-58 and its discussion on Matter of Walter W., (235 A.D.2d 592, 651 N.Y.S.2d 762, leave to appeal denied 89 N.Y.2d 813, 658 N.Y.S.2d 243 (1997)]. Before a prospective employer, foster care or adoption agency can be notified as to the existence of an indicated report of child abuse or maltreatment, the subject is entitled to an administrative review and hearing with respect to the report(s) in question. The standard of evidence for releasing such information is a fair preponderance of the evidence [see 95 LCM-39 and its discussion on Valmonte v. Bane, 18 F.3d 992 (1994)].
3. Family Court Determination of whether child abuse or neglect occurred.	3. Fair Preponderance of Evidence - The outcome will favor the side that has the greater part of the evidence. "Greater" is a qualitative not quantitative term, i.e., the quality of the evidence of one side more nearly represents what took place. If the evidence weighs evenly, so that neither side has a preponderance of it, the issue will be resolved against the party that has the burden of proof and in favor of the opposing party. This is a higher standard than the standard used to "indicate" by child protective services.

4.	Termination of Parental Rights: Family Court Standard	4.	Clear and convincing evidence – In proceedings to terminate a parent's rights to a child on the basis of: death, abandonment, permanent neglect, mental illness, mental retardation, or severe or repeated abuse, the standard used is clear and convincing evidence. The evidence must exceed a fair preponderance and be highly probable.
5.	Criminal Court Standard	5.	Beyond a Reasonable Doubt - This is the highest standard. The evidence must point to one conclusion and leave no reasonable doubt about that conclusion.
6.	Indian Child Welfare Act of 1978	6.	For an abuse or neglect proceeding under Article 10 of the Family Court Act where a Native American child is involved, the standard of proof is clear and convincing evidence. The standard of proof where there is a Native American child in a termination of parental rights proceedings is beyond a reasonable doubt (see 18 NYCRR 431.18).
7.	Expungement of Unfounded Report	7.	When there is a request to expunge an unfounded report prior to the normal expungement time of 10 years after the date of the report, the standard to be met is clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment. A subject may also have an unfounded report expunged if the source of the report was convicted in criminal court of having made an intentional false report to the SCR. [See SSL § 422(5)(c)]

G. Criminal justice system

1. Types of crimes

A criminal offense is conduct, by act or omission, punishable by imprisonment or fine as provided by state, local or administrative law. (Penal Law §10.00) The basic categories of offense are:

a. Petty offenses mean traffic infractions or violations. (Criminal Procedure Law § 1.20(3)) A violation is an offense other than a traffic infraction, for which imprisonment beyond 15 days cannot be imposed.

b. Crimes are divided into misdemeanors and felonies. Misdemeanors are offenses, other than a traffic infraction, for which imprisonment may be imposed in excess of l5 days but not over one year. Felonies are offenses in which imprisonment may exceed one year. (Penal Law §10.00)

2. Specific crimes relating to child abuse and maltreatment cases

A district attorney may prosecute child abuse and maltreatment cases under one or more of the statutes in the New York State Penal Law. The following list, while not inclusive, contains acts that legally constitute crimes against children.

a. Assault and reckless endangerment - Penal Law, Article 120

b. Homicide, manslaughter and murder - Penal Law, Article 125

c. Sex offenses - Penal Law, Article 130

d. Incest - Penal Law, § 255.25

e. Abandonment and endangering the welfare of a child - Penal Law, Article 260[1]

f. Using a child in a sexual performance and promoting a sexual performance by a child - Penal Law, Article 263

3. Steps in the Criminal Justice process

The decision to initiate a prosecution is the sole responsibility of the District Attorney. Among the factors that the District Attorney considers are: the strength of the evidence, the seriousness of the harm caused by the offense, and the adequacy and availability of alternative remedies.

Further information on the material found in this Appendix may be found in *The Courts of New York: A Guide to Court Procedures*,, available on the New York State Bar Association's website.

[1] The Abandoned Infant Protection Act, as amended in 2010, removes criminal liability when a person abandons an infant no more than 30 days old, as per the provisions of Penal Laws 260.00(2) and 260.10(3).

H. Title 6 of Article 6 of the Social Services Law

Information regarding the Social Services Law can be found electronically through either of the following links:

http://public.leginfo.state.ny.us/menuf.cgi

or

http://codes.findlaw.com/ny/social-services-law/

I. Article 10 of the Family Court Act

Information regarding the Family Court Act can be found electronically through either of the following links:

http://public.leginfo.state.ny.us/menuf.cgi

or

http://codes.findlaw.com/ny/family-court-act/

J. New York State regulations regarding child abuse and maltreatment: Part 432 - Codes Rules and Regulations

Part 432 of the Codes Rules and Regulations of New York State can be found online at the New York State Department of State's website:

NYS Department of State's link to Codes Rules and Regulations:

https://www.dos.ny.gov/info/nycrr.html

or

Link to Title 18 of New York Codes, Rules and Regulations at Westlaw:

http://government.westlaw.com/linkedslice/default.asp?SP=nycrr-1000

At either of the above websites, you can access the regulations referenced in the Child Protective Services Manual by clicking on:

- Title 18, Department of Social Services, then
- Chapter II, Regulations of the Department of Social Services, then
- Subchapter C, Social Services
- Article 2. Family and Children's Services
- Select the appropriate Part. The Part of Child Abuse and Maltreatment in Part 432, but there are several regulations from several other parts referenced in this Manual.

K. Model memorandum of understanding

1. Roles of and responsibilities of child protective services and the district attorney in investigations* of child abuse and maltreatment

Child Protective Services	District Attorney
The role of Child Protective Services (CPS) in investigations of child abuse/maltreatment is to provide immediate and long term protection of the child from further abuse or maltreatment and rehabilitative services to the child and family. The responsibilities of Child Protective Services include: • commencing an investigation within 24 hours of receiving a report from the State Central Register; • assessing the environment of the child named in the report and any other children in the home in order to determine the immediate and/or impending risk to such children if they remain in the home and to take protective custody, if such children are in imminent danger; • notifying the subject and other persons named in reports that are being investigated, in writing and within seven days, of the report and their rights to seek amendment of the record. • making a determination within 60 days whether there is some credible evidence of child abuse/maltreatment. • initiating Family Court action, where necessary, in order to compel the	The role of the district attorney is to authorize a criminal investigation of an alleged incident of child abuse/maltreatment for the purpose of determining whether a crime has been committed and where appropriate to criminally prosecute the responsible person(s). The responsibilities of the district attorney include: • serving in an advisory capacity to law enforcement officials who are conducting a criminal investigation of child/maltreatment concerning: — case review — case file preparation — assistance in preparation of and obtaining search warrants — interviews/confrontations — general legal advice — witness preparation • evaluating the evidence gathered to determine whether to pursue criminal prosecution of an alleged perpetrator. • Participating as a member of a multidisciplinary child abuse/maltreatment investigative team, where such an approved team is established.

* The responsibilities of the CPS included in this list apply only to cases that are assigned to the Investigation track and not to cases assigned to the family assessment response (FAR) track. Cases that rise to the level of possible prosecution are not assigned to FAR, and if already assigned to FAR, are closed and re-opened to be addressed with an investigation.

family to accept services or to seek a disposition which separates the child(ren) from the offending parent(s)or otherwise offers appropriate protection to the child(ren). • providing and/or coordinating the provision of rehabilitative services to the child and the family. • participating as a member of the multidisciplinary child abuse/maltreatment investigative team, where such approved team is established. • referring suspected cases of intentional false reporting of child abuse and maltreatment in violation of subdivision four of the Penal Law § 240.50 to the appropriate law enforcement agency or district attorney.	

2. Appointment of liaisons

Child Protective Services	District Attorney
Where there is no multidisciplinary team, Child Protective Services should appoint a liaison to the district attorney's office whose role will be to facilitate working relationships and cooperation on child abuse/ maltreatment investigations so that each party can fulfill their respective roles and responsibilities as delineated in Section I.	Where there is no multidisciplinary team, the district attorney should appoint a liaison to CPS whose role will be to facilitate working relationships and cooperation on child abuse/ maltreatment investigations so that each party can fulfill their respective roles and responsibilities as delineated in Section I.

3. Referral of reports of suspected child abuse and maltreatment

Child Protective Services	District Attorney
Child Protective Services shall provide the district attorney with immediate telephone notice and forward a copy of any reports involving the death of a child made pursuant to Article 6, Title 6 of the Social Services Law (i.e., reports to the Statewide Central Register of Child Abuse and Maltreatment involving the death of a child). Child Protective Services will give immediate telephone notice and forward immediately to the appropriate local law enforcement entity new child protective reports involving any of the following allegations: the death of a child; sexual abuse of a child; and/or the infliction of, or allowing the infliction of, physical injury to a child by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ. In the following circumstance, Child Protective Services (CPS) must make a timely assessment of whether to provide notice to the appropriate law enforcement entity (if CPS determines that such notice should be given, it shall provide immediate telephone notice and forward the report): a report of suspected maltreatment is made by a mandated reporter; the report alleges physical harm; and there have been two or more reports that were indicated or are still under investigation within the previous six months involving the same child, a sibling, other children in the household, or the subject of the report. Once a report as described in the previous two paragraphs generates a notice to a local law enforcement entity, Child Protective Services must conduct an investigation with law enforcement through a multidisciplinary investigative team, if one exists, or through a joint investigation with a local law enforcement entity.	The district attorney requests or has previously requested in writing that the district attorney receive notice and copies of reports containing specified types of allegations of child abuse/ maltreatment. Upon receipt of notice from CPS that a report which has been addressed through a multidisciplinary team or joint investigation has been unfounded, the district attorney will take appropriate action concerning all records received from CPS concerning such report in order to maintain the confidentiality of such reports.

Child Protective Services shall immediately provide the district attorney with telephone notice and copies of any and all reports of child abuse and maltreatment containing the kinds of allegations that the district attorney has requested in advance to receive in writing, pursuant to SSL §424.4. Child Protective Services may not share with the district attorney either open or closed reports addressed by family assessment response as all FAR reports are legally sealed. Where a report that was previously forwarded to the district attorney is later unfounded and sealed, upon receipt of notice from the State Central Register, CPS will so notify the district attorney in writing.	

4. Identification and notification of law enforcement agencies

Child Protective Services	District Attorney
When it receives a report that includes an allegation of the type for which the district attorney has requested notice, CPS shall telephone the district attorney to advise the district attorney of the report and shall provide a copy of the report to the district attorney. If authorized by the district attorney, CPS shall contact the designated police agency.	The district attorney designates law enforcement agencies to conduct investigations of child abuse and maltreatment in specified geographic areas. Upon receiving notice from CPS of a report, as requested per § III, the district attorney will determine whether a criminal investigation should be initiated. If so, the district attorney shall contact the designated police agency to request initiation of the criminal investigation or authorize CPS to contact the designated police agency.

5. Procedures for communication during joint CPS / law enforcement investigations of child abuse and maltreatment

Child Protective Services	District Attorney
Child Protective Services will contact the designated police agency by telephone prior to making any initial contacts with the child, any other person named in the report, or the subject of the report; this will enable CPS and the police to determine together the appropriate procedures for such contact in	The district attorney authorizes Child Protective Services to contact the appropriate police agency prior to making any initial contacts with the child, any other person named in the report, or the subject of the report for the purpose of determining appropriate procedures for such contact in those situations where criminal investigation is

those situations where a criminal investigation is necessary. Child Protective Services, in conjunction with a multidisciplinary investigative team, if one exists, or with the designated police agencies, shall develop standardized procedures for coordinating investigations of child abuse/maltreatment, including: interviewing the child, subject, other family members, witnesses, and others; evidence gathering; and, where appropriate, taking the child for a medical exam. Pursuant to SSL §422.4, Child Protective Services will share additional CPS information related to reports that CPS is currently or has previously investigated with the district attorney, assistant district attorneys, investigator(s) employed in the district attorney's office, or other police officials when such officials state in writing that they are participating in a criminal investigation or criminal prosecution of the subject of a report and there is reasonable cause to believe that such investigation or prosecution is related to the CPS records being requested. If there is an investigation of a missing child, the district attorney may request of the CPS and should immediately be given access to, information in an open or indicated CPS investigation report, if the district attorney states that he/she: • suspects that the child's parent, guardian or other person legally responsible for the child may be a subject of a CPS report, or that the child or his/her sibling may be a child named in a report, and • that information from such a report is or may be needed for the investigation of the missing child. At any time during the course of an investigation, either CPS or the district attorney may request a case conference to discuss the on-going investigation. In any case where the district attorney's designees have been involved in the	necessary. – or – Working as part of a multidisciplinary investigative team, where one exists, the district attorney, Child Protective Services, and the designated police agencies (see **Chapter 6**, *Child Protective Services Investigations*) develop procedures for coordinating investigations of child abuse/ maltreatment including procedures for: interviewing the child, subject/perpetrator, other family members, witnesses, and others; evidence gathering; and, where appropriate, taking the child for a medical exam. The district attorney, assistant district attorney(s), investigator(s) employed in the district attorney's office, or other police officials designated by the district attorney who are involved in an investigation or prosecution shall receive additional written CPS information (other than the initial report to the SCR already provided) when the district attorney, assistant district attorney, investigator or police official states, in writing, that the records, reports and other information are necessary to conduct a criminal investigation or prosecution of the subject of the report and there is reasonable cause to believe that such investigation or prosecution is related to the CPS records being requested. If there is an investigation of a missing child, the district attorney may request of the CPS, and should immediately be given access to, information in an open or indicated CPS investigation report, if the district attorney states that he/she: • suspects that the child's parent, guardian or other person legally responsible for the child may be a subject of a CPS report, or that the child or his/her sibling may be a child named in a report, and • that information from such a report is or may be needed for the investigation of the missing child.

investigation, CPS will notify the district attorney of subsequent Family Court action. Child Protective Services shall provide the district attorney with on-going information during the course of the criminal investigation or prosecution concerning the treatment plan for the child/family, if the district attorney requests it in writing.	At any time during the course of an investigation, either CPS or the district attorney may request a case conference to discuss the on-going investigation. The district attorney will notify CPS of any investigatory or court action taken on a case under joint investigation or for which CPS has provided information to the district attorney or the district attorney's designee.

L. Child Fatality Investigations

This section is intended to provide guidance to Child Protective Services (CPS) caseworkers and supervisors regarding the actions to take in the investigation of CPS reports involving a sleep-related death or injury and the criteria for making the determination whether to indicate or unfound such reports. Please refer to 13-OCFS-LCM-01, *Investigation and Determination of Sleep Related Fatality and CPS Reports and* 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping.*

1. Fatality report checklists

As per communication from Laura Velez to the local commissioners on December 6, 2017, the checklists that follow were distributed in response to several requests from local districts for guidance related to investigations into child deaths.

One checklist applies to child deaths that are reported to the SCR, the other is for cases when a child dies in a foster care, preventive or CPS case when no fatality report is registered by the SCR.

These checklists are not required, nor do they include any new requirements or modify any existing standards for investigations related to the death of a child. They are intended to be a tool for use by a CPS worker, a supervisor or a manager to provide a reminder of the details associated with investigation and provision of services to families in the difficult circumstance when a child dies.

a. *SCR*

"Completion of this checklist is not required by OCFS. This is an optional tool for use by CPS workers, CPS supervisors and/or LDSS management in considering necessary actions during a child fatality investigation."

b. *Non-SCR*

"Completion of this checklist is not required by OCFS. This is an optional tool for use by LDSS staff in considering case activities when a child death occurs in an open case. The following specifically speaks to actions related to the child fatality, not of service case practice."

2. SCR reported fatality checklist

This checklist is designed to help guide workers towards meeting the mandates for case activities during a child fatality investigation. Several tasks listed below are specific to investigations regarding a child death. Completion of this checklist is not required by OCFS. This is an optional tool for use by CPS workers, CPS supervisors and/or LDSS management in considering necessary actions during a child fatality investigation.

*** This checklist is not all-inclusive. Refer to the CPS Program Manual for complete guidance.**

	Yes	No	NA
Initiated the investigation within 24 hours of receipt of the SCR report	☐	☐	☐
Notified the District Attorney about the SCR report within 24 hours	☐	☐	☐
Immediately notified law enforcement about the SCR report	☐	☐	☐
Assigned the investigation to the Multi-Disciplinary Team – For counties without an MDT, refer to local protocol	☐	☐	☐
Notified the Medical Examiner/Coroner about the child's death	☐	☐	☐
Assessed safety of all the **surviving children** within 7 days: - Children in the deceased child's home, whether siblings or unrelated children - Siblings outside the home, with whom the deceased child had regular contact - Children of all subjects, with whom the subject has regular contact	☐	☐	☐
Identified all adults residing in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Identified all siblings and all children residing in or regularly present in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Identified all parents of children residing in or regularly present in the home within 24 hours to accurately reflect that information in the 24-hour Fatality Report/Safety Assessment	☐	☐	☐
Reviewed prior CPS reports and records involving members of the family/subject(s) within 24 hours	☐	☐	☐
Completed the 24-hour Child Fatality Summary Report	☐	☐	☐
Completed the 24-hour Child Fatality Safety Assessment	☐	☐	☐
Completed the 7-Day Assessment	☐	☐	☐

	Yes	No	NA
Notified the subjects, other persons, and parents of the SCR report within 7 days	☐	☐	☐
Added persons as necessary to the case, and notified as appropriate within 7 days (i.e. All household members and absent parents)	☐	☐	☐
Completed the 30-Day Fatality Summary Report	☐	☐	☐
Completed the 30-Day Fatality Safety Assessment	☐	☐	☐
Contacted the source of the report, or made diligent efforts to do so	☐	☐	☐
Completed the Risk Assessment Profile	☐	☐	☐
Identified and clearly documented reasoning for substantiating and/or unsubstantiating each allegation	☐	☐	☐
Entered incident date into CONNECTIONS	☐	☐	☐
Offered and provided or arranged for needed services to the family	☐	☐	☐
Made a home visit to evaluate the child(ren)'s environment	☐	☐	☐
Contacted appropriate collaterals	☐	☐	☐
Assessed the need for Family Court action, consulting Legal Department when necessary	☐	☐	☐
Conducted face-to-face interviews with the following:			
Subjects of the report	☐	☐	☐
Children residing in or regularly present in the home	☐	☐	☐
Other persons named on report/other adults residing in home	☐	☐	☐

Additional best practice recommendations:

Gathered information from the following individuals or agencies: **(Common sources of pertinent information)** ***Note that some persons below may be appropriate/necessary collaterals, depending on case circumstances**			
	Yes	**No**	**NA**
Parent(s)	☐	☐	☐
Hospital	☐	☐	☐
Medical provider	☐	☐	☐
District Attorney	☐	☐	☐
Law Enforcement agency	☐	☐	☐
Medical Examiner/Coroner	☐	☐	☐
School	☐	☐	☐
Public agency	☐	☐	☐
Community agency	☐	☐	☐
Relatives	☐	☐	☐
Neighbors	☐	☐	☐
Other CPS and child welfare staff	☐	☐	☐
Treatment providers, e.g. mental health, substance abuse, etc.	☐	☐	☐
Other individual or agency with relevant, needed information, including requests for out-of-state records when applicable	☐	☐	☐

Other Helpful Activities			
	Yes	**No**	**NA**
Requested proper documentation of and/or arrange for photographs/X-rays of any physical injuries	☐	☐	☐
Provided relevant safety and risk information to service providers	☐	☐	☐
Requested the autopsy report and/or death certificate (and documented in progress notes as to the cause, manner, and time of death – if known)	☐	☐	☐

3. Non-SCR reported fatality checklist

Regarding the death of a child in an: Open CPS Investigation, Open FAR case, Open CPS Services case, Open Preventive Services case, Open Foster Care case.

This checklist is designed to help guide case activities when a child death occurs in an open case. Completion of this checklist is not required by OCFS. This is an optional tool for use by LDSS staff in considering case activities when a child death occurs in an open case. The following specifically speaks to actions related to the child fatality, not of service case practice.

* **The following specifically speaks to actions related to the fatality, not of service case practice.**
* **This checklist is not all-inclusive. Refer to the CPS Program Manual for complete guidance.**

Upon learning of the child fatality	
Notified the Regional Office of the death by phone within 24 hours (Required by 06-OCFS-LCM-13; 18 NYCRR 441.7)	☐
Submitted the **OCFS-7065 Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Open Child Protective or Preventive Cases** to the Regional Office within 72 hours (Required by 06-OCFS-LCM-13)	☐
Entered the child's date of death into CONNECTIONS	☐
Began gathering information (circumstances/facts) about the death	☐
From the information gathered, evaluated whether there is reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker	☐
If there was reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker, an SCR report was made (Required by SSL § 413 & 415)	☐
Completed a Plan Amendment FASP to reflect the child's change in status in the open case – Completed and approved within 30 days. (Only applicable in open Services cases) (Required by 18 NYCRR 428.7)	☐

Best practice recommendations for gathering facts and circumstances regarding the death:

Assessments	
Assessed safety of all the **surviving children** within 7 days: - Children in the deceased child's home, whether siblings or unrelated children - Siblings outside the home, with whom the deceased child had regular contact	☐
Documented the safety assessment(s) and whereabouts of all children in a progress note, contemporaneously with the event date(s)	☐
Assessed the family's service needs with respect to the fatality, and arranged for or provided such services as needed	☐

Suggested records for review, depending on circumstances	
CPS/Preventive records	☐
Law enforcement records (criminal history, victim/suspect history, calls for service, statements)	☐
911 calls	☐
EMS reports	☐
Autopsy report/Death certificate	☐
Medical records for deceased child	☐
Medical records for surviving siblings/children in the home	☐
Service Provider records for the parents	☐

Recommended interviews/collateral contacts	
Parents of the deceased child	☐
Surviving children/siblings	☐
Medical examiner/coroner	☐
School	☐
Relatives/family members	☐
Neighbors	☐
Emergency room personnel	☐
Caretakers (babysitters/childcare employees, etc.)	☐
Law enforcement	☐
Medical providers	☐
Agency Personnel (CPS, Preventive, Daycare Licensing, etc.)	☐
First Responders	☐

Documentation	
If no safety concerns were found, a summary statement addressing the safety was entered into progress notes	☐
If safety concerns were found, the following were added to the statement addressing safety:	☐
Name(s) of child(ren)	☐
Date(s) of birth	☐
The child(ren)'s location	☐
Actions taken to assess safety and implement mitigating/protective factors	☐
The cause and circumstances surrounding the child's death, and how it was determined there was not reasonable cause to suspect the death was a result of abuse or maltreatment by a caretaker - entered into progress notes	☐
A summary of activity to date and what plans, if any, there are for future service activity with the family, entered into progress notes	☐

4. Investigating sleep related fatality and injury CPS reports

Conducting a complete and thorough investigation is important for all CPS reports, but especially for those involving a fatality or serious injury. In regard to sleep-related cases, OCFS release 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping*, provides guidance on what a complete investigation of such a case should include. The following guidance on investigations is generally derived from that release. This guidance refers to "infants," but it may also be applicable to older children who have developmental or medical conditions that make them susceptible to death or injury due to sleep-related conditions.

a. *Some recommended steps for obtaining information*

When conducting a CPS investigation of a report of an infant who has died while sleeping or incurred a sleep-related injury, the following actions are recommended for gathering information:

- Speak with Emergency Medical Services (EMS), law enforcement, and any other first responders or individuals who were on the scene of the incident, in order to obtain specific information pertaining to the cause and circumstances of the infant's injury or death.
- Secure information from first responders or law enforcement regarding the conditions in the home, condition of the infant when they arrived, and any statements made to first responders or law enforcement by those present in the home regarding what transpired.
- Where reasonably possible, locate and view the exact place where the infant's death or injury occurred. Identify where the infant was placed and by whom, and the position (back, stomach, or side) of the infant, both when last observed alive and when found dead or unresponsive.
- Observe the physical living environment and, when the circumstances permit, take photographs or video of the scene. This should be done even if the body has been removed. If the first responders or law enforcement personnel have taken photos or video, request copies of those items. This may assist CPS in conducting an efficient investigation and reduce duplication of efforts.
- Establish and document the timeline of events regarding the incident, including, but not limited to, the events of the day prior to the time when the infant was placed to sleep, if and when the infant was thereafter observed by anyone in the household, and when the infant was discovered to be in distress, through the time when first responders arrived at the home.
- Solicit and record the observations of all persons in the household regarding what they saw and heard with respect to the infant during the timeline established above. Ask relevant household members about these details and, if possible, ask them separately. Document if the family also spoke with law enforcement about the details.
- Consult with the infant's pediatrician and any other service providers. Health and service providers should be asked about the infant's history.
- Obtain the medical examiner's/coroner's report and any reports completed by first responders or law enforcement.

Do not stop collecting evidence or contacting collateral sources because law enforcement or the local district attorney concludes that there was "no foul play" or is not otherwise pursuing criminal charges. Similarly, do not stop or otherwise limit the investigation because the preliminary findings of the medical examiner or coroner do not indicate or suggest the presence of abuse or maltreatment. In all cases, a complete CPS investigation must be conducted and recorded as required by 18 NYCRR 428.5 and 432.2(b)(3), including the ongoing assessment of the safety and well-being of any surviving children in the household.

Be aware that the decision by law enforcement not to arrest the subject or by the district attorney not to prosecute, in and of itself, is not controlling in CPS's decision as to whether there is some credible evidence to substantiate one or more allegations. The district attorney and law enforcement use a standard of evidence that is higher than the one used by CPS.

Also, be aware that officials outside of the child welfare system use terminology that is not consistent with that used by CPS. Medical examiners/coroners use terms that have meanings or implications for them that may be different than they are in child protective terminology. Criminal charges are not the same as making assessments of abuse or maltreatment. For example, if an infant dies of "natural causes" or dies because of what the medical examiner/coroner refers to as an "accident," that does not in and of itself mean that there was not maltreatment in the case. It generally means, for the purpose of the medical examiner/coroner, that the case was not a homicide. Become familiar with the terms used by the medical examiner/coroner and how they are defined. These are the types of cases where you should not only be consulting with your supervisor but also with your agency attorney.

Depending on the case, CPS should consider consulting with medical and/or other appropriate professionals for the purpose of assessing the evidence collected during the investigation to assist CPS in making its determination. This could include deciding to consult with medical experts other than your local medical examiner/coroner.

In those communities in which there is a multidisciplinary team (MDT) or a Child Fatality Review Team (CFRT), local districts should follow the local protocols for working with those teams (see 10-OCFS-LCM-09, *Multiple Disciplinary Teams and Child Abuse Investigations*).

b. *Important information to obtain*

CPS workers should obtain as much information as possible about any and all circumstances that might be relevant to ascertaining the possible cause(s) of an infant's sleep-related death or injury and to assessing possible future risk to any other children in the home. Information should be gathered that will allow CPS investigators to determine the events and circumstances on the day of the incident — prior to, during, and after the death or injury – and to assess them along with any other relevant facts about the family or infant.

What follows is a brief listing of the information that CPS caseworkers should attempt to obtain when investigating reports of an infant's death or injury that may be related to unsafe sleep conditions. This list does not necessarily contain every factor that should be considered, as the relevant factors may vary from one report to another. The following information may be obtained by completing the actions noted in the previous section and by observations, interviews, reviews of previous reports, or other means.

- Determine all aspects of the sleeping conditions at the time of the infant's death or injury including, but not limited to:
  - where the infant was sleeping (in a crib, bed, on a couch, or elsewhere), including an assessment of the firmness of the surface;
  - what, if any, other objects were on the sleeping surface, including pillows, blankets, stuffed animals, or any other objects, and their location in relation to the infant when the infant was placed to sleep, while sleeping, and when found;
  - the position of the infant when placed to sleep, while sleeping, and when found. A reenactment using a doll may be helpful in determining this information. Specifically,
    - was the infant placed to sleep face up, face down, or on its side;
    - where on the sleep surface was the infant placed to sleep;
    - where on the sleep surface was the infant found in distress;
    - was the infant found face up, face down or on its side;
    - was the infant between objects, such as, cushions when found in distress;
    - was the infant's head covered with anything when found;
  - temperature of the room and the amount of clothing worn by the infant;
  - the condition of the room in which the incident occurred;
  - the presence and location of other persons or animals in relation to the infant while sleeping;
  - any other aspects of the environment in which the infant slept.
- If a shared sleeping situation has been identified, be sure to:
  - Determine all of the above information regarding the sleep surface and sleeping conditions, paying special attention to the positional relationship of the infant with any other occupant of the sleeping surface.
  - Identify the number, identity, and size of occupants, including pets, on the bed, couch, or other sleeping surface.
- Inquire into the infant's usual sleeping arrangements, including the infant's usual sleeping location and normal sleeping schedule, and whether the sleeping arrangements at the time of the incident varied from the infant's normal routine.
- Determine if the infant had any medical condition, either a pre-existing condition or one that existed on the day of the incident (for example, mild cold, infection, sleep apnea, use of a respiration monitor) that could enhance risk to an infant in a sleep situation and, if so, whether the caretakers were aware of that risk.

5. Making the determination

A determination is made by applying the facts, as developed as part of a complete CPS investigation, against each of the elements of the definition of abuse or maltreatment.

Abuse – A finding of intent or gross negligence would, as a practical matter, be required in unsafe sleeping cases to satisfy the definition of abuse. Accordingly, it would be extremely rare to have an abuse case in regard to bed sharing.

Maltreatment – In light of that, this release focuses on maltreatment.

In making a determination in a fatality or sleep-related injury report, CPS caseworkers must determine whether the facts of the case, as developed by CPS during its investigation and using the "some credible evidence" standard, satisfy each of the elements of the definitions of abuse as defined in SSL §412(1) / FCA §1012(e) or maltreatment as defined in SSL §412(2) of the SSL / FCA §1012(f).

Each of the respective elements of abuse or maltreatment must be supported by some credible evidence.

For the purpose of the definition of maltreatment, the elements are:

a. The infant's physical, mental or emotional health or condition was impaired or placed in imminent danger of impairment; and

b. The subject of the report failed to exercise a minimum degree of care in providing proper supervision or guardianship to the infant; and

C. The subject's failure to exercise a minimum degree of care caused the impairment or imminent danger of impairment.

Whether a sleep-related fatality or sleep-related injury report, there must be some credible evidence satisfying each of the elements of the definition of maltreatment (failure to exercise a minimum degree of care, impairment or imminent danger of impairment, and causation) for a report to be indicated for maltreatment.

Whether there is a sleep-related fatality or sleep-related injury, the basis for the determination must be timely and completely recorded in the record.

a. *Bed sharing*

This refers to a case involving an infant who dies or is injured and who was sharing a sleeping surface with another person (adult or child). For the purpose of this guidance, bed sharing refers to an infant and one or more persons sleeping together on any surface, not necessarily a bed.

Bed sharing with an infant, by a parent or other person legally responsible, without an aggravating factor or proof of intentionally harming the infant, is not abuse or maltreatment, irrespective of whether the infant is harmed or not.

(i) Failure to exercise a minimum degree of care

The first step in making a determination in a case in which there is a sleep-related death or injury is to determine whether there was a failure to exercise a minimum degree of care. Where a parent or other person legally responsible bed shares with an infant and an aggravating factor is present, the parent or other person legally responsible has failed to exercise a minimum degree of care.

Bed sharing aggravating factors include, but are not limited to:

1. The parent or other person legally responsible was under the influence of alcohol or legal or illegal drugs to the extent that such person's judgment or physical ability was impaired, including the ability to arouse.
2. The infant had a medical condition known to the parent or other person legally responsible and the parent or other person legally responsible had been made specifically aware or should reasonably been aware that, because of the medical condition, bed sharing increased danger to the infant.

3. The parent or other person legally responsible was significantly sleep deprived to the extent that such person's judgment or physical ability was significantly impaired.
4. The physical condition of the sleeping area was unsafe or the contents of the sleeping area created an unsafe condition.
5. The size of the sleeping surface in relation to the occupants (persons, pets and/or objects) created an unsafe condition.
6. The temperature of the room or the sleeping area, including the infant's clothing and bed coverings used, in which the infant was cared for was so extreme as to make it unsafe.
7. Another condition that a reasonable person would understand to place an infant at risk of harm.

If there is not an aggravating factor, then there is no maltreatment, irrespective of whether the child was harmed or not.

If there is an aggravating factor present, then there must be a determination as to whether there was impairment or imminent danger of impairment.

The existence of some credible evidence of an aggravating factor, in and of itself, is not sufficient to indicate a report.

The receipt or the failure to receive safe sleep counseling does not impact the determination whether the parent or other person legally responsible exercised a minimum degree of care in regard to the fatality.

(ii) Impairment or imminent danger of impairment

For sleep-related fatality cases, the issue of impairment is addressed by the death of the child. For sleep-related injury cases, there must be some credible evidence that the infant's physical health or condition has been impaired or placed in imminent danger of impairment.

(iii) Causation

Whether the report is for a sleep-related fatality or sleep-related injury, the issue of causation must also be addressed and resolved.

The test here is whether the subject's failure to exercise a minimum degree of care caused the impairment or the imminent danger of impairment.

Sleep-related fatality cases

For fatality cases, the issue then is whether there is some credible evidence that the death of the infant was caused by the parent's/other person's legally responsible failure to exercise a minimum degree of care.

The means of proving causation includes direct contact and inquiry of the medical examiner or coroner as to whether the death of the infant was caused by the actions of the parent or other person legally responsible.

In all cases, CPS should address the issue of causation with the applicable medical examiner or coroner.

If the medical examiner or coroner affirmatively states that there is no such causation, the report must be unfounded, unless there is credible evidence to the contrary that was not considered by the medical examiner or the coroner when the medical examiner or coroner made his or her findings regarding the death of the infant. In such a case, CPS may apply

such additional evidence to its determination of causation relating to the DOA/Fatality allegation.

If the medical examiner or the coroner states that there is causation between the actions or inactions of the parent or other person legally responsible and the death of the infant, then causation has been satisfied.

If the medical examiner or the coroner does not or cannot give an opinion on causation, then CPS should do the following:

CPS makes the causation determination based on the facts before it. CPS should consult with other medical professionals, such as the infant's pediatrician, the hospital that treated the infant, or the county health department. CPS should consult with law enforcement and EMS personnel who observed the scene. CPS should assess statements from witnesses who are otherwise familiar with the incident or conditions in the home. The CPS worker should not make a determination in such instances without such consultation.

If the conclusion reached by CPS is that there is not some credible evidence that the parent or other person legally responsible caused the death of the infant, the allegation of DOA/Fatality must be unsubstantiated, as must any other allegation that uses the death of the infant as the basis for such determination. Note there may be cases where there is not some credible evidence of causation of the death of the infant but the facts of the case otherwise support a finding of imminent danger to the infant.

Sleep-related injury cases

For sleep-related injury cases, the issue is whether there is some credible evidence that the impairment or the imminent danger of impairment was caused by the parent's/other person's legally responsible failure to exercise a minimum degree of care.

CPS makes the causation determination based on the facts before it. CPS should consult with medical professionals, such as the infant's pediatrician or the hospital that treated the infant (if medical treatment was received), or the county health department. CPS should consult with law enforcement and EMS personnel who observed the scene. CPS should assess statements from witnesses who are otherwise familiar with the incident or conditions in the home.

If the conclusion reached by CPS is that there is not some credible evidence that the parent or other person legally responsible caused the impairment or created an imminent danger of impairment, the sleep-related injury allegation must be unsubstantiated.

b. *Unattended sleeping infant*

This refers to a case involving an infant who dies or is injured and who is not sharing a sleeping surface with another person (adult or child).

(i) Failure to exercise a minimum degree of care

Where a parent or other person legally responsible leaves the infant unattended and an aggravating factor is present, the parent or other person legally responsible has failed to exercise a minimum degree of care. Unattended sleeping infant aggravating factors include, but are not limited to:

1. The infant was left unattended for an unreasonable amount of time under the circumstances.
2. The physical condition of the sleeping area was unsafe.

3. The contents of the sleeping area created an unsafe condition.
4. The size of the sleeping surface in relation to the occupants (person, pets and/or objects) created an unsafe condition.
5. The temperature of the room or the sleeping area, including the infant's clothing and bed coverings used, in which the infant was cared for was so extreme as to make it unsafe.
6. The parent or other person legally responsible was under the influence of alcohol or legal or illegal drugs to the extent that such person's judgment or physical ability was impaired to the point that such person was unable to adequately supervise the infant.
7. Another condition that a reasonable person would understand to place an infant at risk of harm.

   If there is not an aggravating factor, then there is no maltreatment, irrespective of whether the infant is harmed or not.

(ii) Impairment or imminent danger of impairment; and

(iii) Causation

If there is an aggravating factor present, then there must be a determination whether there was impairment or imminent danger of impairment. As with a fatality report, the issue of causation must also be addressed.

The existence of some credible evidence of an aggravating factor, in and of itself, is not sufficient to indicate a report.

The receipt or the failure to receive safe-sleep counseling does not impact the determination whether the parent or other person legally responsible exercised a minimum degree of care in regard to the fatality.

In those cases, in which there is no bed sharing, the criteria for **Impairment or Imminent Danger of Impairment and Causation** are the same as in cases in which there is bed sharing.

Whether there is a sleep-related fatality or sleep-related injury, the basis for the determination must be timely and completely documented in the record.

M. Kinship Care[2]

The **Kinship Guardianship Assistance Program (KinGAP)** is designed for a foster child to achieve a permanent placement with a relative, or a specified non-relative, who had been the child's foster parent for at least six months. This program provides financial support and in most cases medical coverage for the child, beginning with the child's discharge from foster care to the guardian. The level of financial support is similar to the maintenance payments received while the child was in foster care.

In addition to being the child's foster parent for at least six months, the prospective guardian must be related to the child by blood, adoption, or marriage or related to a half-sibling of the child by blood adoption, or marriage and also be the prospective or appointed relative guardian of such half-sibling. The relationship can be to any degree of affinity. Non-related foster parents who have a positive relationship with the child that was established prior to the child's current foster care placement may also be eligible. The family can have a single parent or two parents. The family may have birth children, adoptive children, or no other children. Families can vary by age, income, lifestyle, and marital status. A KinGAP family must have a strong commitment to caring for the child on a permanent basis.

The foster child must have a strong attachment to the relative who proposes to be a relative guardian. The child must be consulted if age 14 or over. If age appropriate, younger children should be consulted as well. The child must consent if age 18 or over.

The child in foster care does not have to be freed for adoption in order for Kinship Guardianship Assistance to be provided. However, both "return home" and "adoption" must be ruled out as permanency options for the child. The foster child's caseworker will be working with the child's birth family and prospective relative guardian to explore other permanency options or determine that there are compelling reasons for the child not to return home or be adopted.

Because, as stated above, the child's parental rights need not be terminated to achieve Kinship Guardianship Assistance, the legal process from application to finalization can be considerably shorter than freeing a child and legalizing an adoption.

KinGAP requires that agencies must check with the New York State Child Abuse and Maltreatment Register (and other states' comparable registries if adults in the home lived in any other states in the last five years) to determine whether the proposed guardian, or any person age 18 or over who resides in the home, has previously abused or maltreated a child. Also, a state and national (with the FBI) criminal history check for a proposed guardian, or any other person age 18 or over who is currently residing in the home, is required. Since these requirements were met when the foster home was initially certified or approved, they are considered having been met for the KinGAP. An indicated report of abuse or maltreatment or a criminal record does not necessarily prevent Kinship Guardianship Assistance.

Kinship Publications found at http://ocfs.ny.gov/kinship/resources.asp**:**

1. *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children* (Pub 5080) and *Con Vozy Voto: Manual para Parientes Criando a Ninos* (Pub 5080S):

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[2] 11-OCFS-ADM-03 KinGAP Guardianship Assistance Program
http://ocfs.ny.gov/kinship/background_and_process.asp

a joint publication of the New York State Office of Children and Family Services and Office of Temporary and Disability Assistance, is at the following link:

http://ocfs.ny.gov/main/publications/Pub5080.pdf

http://ocfs.ny.gov/main/publications/Pub5080-S.pdf

2. *Know Your Options: Relatives Caring for Children* (Pub. 5120) and *Conozca Sus Opciones: Parientes Cuidando a Ninos* (Pub 5120S): a brochure of the New York State Office of Children and Family Services, is at the following link:

   http://ocfs.ny.gov/main/publications/Pub5120.pdf

   http://ocfs.ny.gov/main/publications/Pub5120-S.pdf

3. *Know Your Options: Kin Caring for Children* (Pub. 5175) and *Conozca Sus Opciones: Parientes Cuidando a Ninos* (Pub. 5175S)

   http://ocfs.ny.gov/main/publications/Pub5175.pdf

   http://ocfs.ny.gov/main/publications/Pub5175-S.pdf

4. Know Your Permanency Options: The Kinship Guardianship Assistance Program (Pub 5108) and Conozca sus opciones de permanencia: Programa de Asistencia para Parientes como Tutores de Menores (Pub 5108S)

   https://ocfs.ny.gov/main/publications/pub5108.pdf
   https://ocfs.ny.gov/main/publications/Pub5108-S.pdf

N. Documentation guidelines for Family Assessment Response (FAR) cases

1. Report received

- Upon receipt of the report, a progress note should be entered (by the assigned worker or supervisor) that supports the assignment of the report to the FAR track. If desired, the screening tool used by the district could be cut/pasted into the notes.
- A review of the CONNECTIONS history for the family should be conducted within 24 hours and documented. If there has been prior relevant CPS / FAR history, the worker should summarize the nature of this history and, if available, the family's willingness to participate in the process. Every effort should be made to control for the potential for bias when reviewing prior case history.
- If the report received is a subsequent report and will be screened into FAR, CPS/FAR has the option of consolidating the subsequent report into the prior FAR stage if the consolidation criteria are met, including the requirement that consolidation must take place within 53 days of the prior Intake (see *CONNECTIONS Step-by-Step Guide: Training for CPS Workers* on the OCFS Intranet for additional criteria). If the criteria are not met or if a decision is made to NOT consolidate the stages, the FAR worker *must* complete all the required steps for FAR (e.g. safety assessment, FLAG) and document them in the new FAR stage.

2. 24-hour assessment of safety

An assessment of safety must be *initiated* within 24 hours of the receipt of a report in at least one of the following ways:

- Face-to-face contact with the family and/or child
- Significant telephone contact with the family and/or child
- Significant contact with the source of the report or other identified person if he/she is in the position to provide information about whether the child may be in immediate danger of serious harm.

Documentation should reflect how the safety assessment was initiated in the initial 24-hour period, what additional contacts or information the worker gathered to make a preliminary assessment of the child's safety (i.e., review of prior history, conference with supervisor), what known facts led the worker to believe that the child was not in immediate danger, and any supplemental information.

3. Initial contact with the family

- Whenever possible, first contact made with the family on a FAR report should be with the caretaker and not begin with the children. At the time of initial contact, the family should be made aware of the concerns outlined and efforts should be made to schedule an appointment with the family to further explore the family's strengths and needs. Documentation should reflect this process.
- If the family's phone contact information is not available at the time the report is received, an unannounced visit may be warranted to gather more information and/or make an appointment to meet with the family and any other extended family or resources they deem appropriate.

- Documentation should state how the initial contact was made and what transpired.

4. Description of FAR, notification to the family, and agreement to participate

If eligible for and given the option of participating in FAR, families have the right to choose whether to participate in the FAR process or in an investigation.

- Documentation must clearly state that the worker provided written notice to the family [i.e., each parent, guardian, or other person legally responsible for the child(ren)] offering a FAR response to a CPS report, including information about FAR. (The written notice must also explain the caseworker's role as a mandated reporter.)
- If, in the unusual circumstance that written notification was not provided to one or more of the above persons, the reasons that the notification was not provided must be documented.
- Documentation should indicate that a discussion was held with the family regarding FAR, including that the family was informed of the key differences between the FAR and investigation approaches and of the caseworker's responsibilities as a mandated reporter should safety concerns warrant reassignment to an investigation within seven days or the need for a new report made to the State Central Register.
- Documentation should note if a FAR brochure was given to the family.
- Documentation must clearly state the family's willingness to participate in FAR.

5. 7-day safety assessment

A 7-day safety assessment is required on all FAR cases. The decision to continue a family on a FAR track can only be made after the completion of this initial assessment. Unless case circumstances dictate otherwise, districts are strongly encouraged to use the full seven (7) day period to engage the family and obtain as much information as possible to decide about safety, being aware that the assessment must be complete and a FAR decision made no later than seven days after the report was made. Sources of information to complete a 7-day safety assessment must be documented and include, but are not limited to:

- Contact with and observation of the children and discussion with the family
- Discussion with the source and evaluation of information provided
- Relevant information available from collateral contacts
- Review of previous reports associated with one or more caretakers named in the current report

Only cases with the following safety decision ratings are eligible to continue the FAR track:

1. No safety factors were identified now. Based on currently available information, there are no child(ren) likely to be in immediate danger of serious harm. No Safety Plan / Controlling Interventions are necessary now; **and/or**
2. Safety factors are present, but do not rise to the level of immediate or impending danger of serious harm. No Safety Plan / Controlling Interventions are necessary now. However, identified Safety Factors have been/will be addressed with the parent(s)/caretaker(s)/ person(s) legally responsible and reassessed.

CONNECTIONS will not support selection of the FAR checkbox with any other safety decision rating.

Any information gathered to make this assessment of safety is to be reflected in the progress notes as well as in the completed and approved safety assessment.

6. *Family-Led* assessment

The concept of *Family-Led* is fundamental to the entire FAR process. It begins upon first contact and spans through closure of a FAR case. The family-led process **does not** eliminate the need to point out and explore the presence of concerns identified by the local district with the family. Transparency, in this regard, is key to the FAR process.

- There should be documentation in progress notes that demonstrates a family-led process. This includes, but is not limited to, **the family's** identification of:
  - Individual and family strengths
  - Individual needs and/or concerns as well as those of the family unit
  - Safety and risk concerns
  - Family proposed solutions to family and county concerns
  - Sources of natural / informal support (i.e., extended family, friends, neighbors, church community, etc.)
  - Sources of formal support (i.e., mental health services, educational support, employment services, parenting education, etc.)
- Further, documentation must demonstrate caseworker efforts to **explore and elicit** information pertaining to each area of the Family-Led Assessment Guide (FLAG):
  - Family functioning, resources and relationships (including areas of concern related to safety and risk, i.e., domestic violence, substance abuse, etc.)
  - Child(ren)'s development, strengths and needs
  - Caregiver(s) functioning, strengths and needs
  - Caregiver(s) ability to advocate for child and family needs

Effort should be made to clearly document information elicited from the family in the family's own words, rather than the conclusions made by the caseworker. The worker should note how he/she obtained that information from the family (i.e., if it was using a specific tool such as "three houses," or the type of questioning used).

7. Engagement

"Families are more than the problem that brought them into the system"

Engagement is often synonymous with *involvement*, but families can be involved and compliant without being **engaged**. Engagement is about motivating and empowering families to recognize their needs, strengths and resources, and to take an active role in ensuring the safety of their children and minimizing future risk of harm to their children.

Let the family tell you their story, in their own words, and document it that way. The family's **voice** should be present within the documentation. Let the family identify the strengths and needs of family members and the family and identify them in that way within the documentation.

- Family meetings – when appropriate and possible, efforts should be made to meet with the whole family together, and the meeting documented. Let the family identify who they

consider to be members of their family and allow them to invite whomever they feel should be "at the table" for this discussion. Documentation should include a statement that identifies who was present for the family meeting, describes what role each person plays within the family, and depicts his/her contributions to the meeting.

- Talking to children/youth – all family members' voices should be reflected in documentation, including that of children and youth. Documentation should demonstrate engagement of these youth through conversation or family-led activities and their voice should be reflected in the case record.
- Words such as "interviewed" should be replaced with "assessed," "explored," or "discussed," reflecting the caseworker's ability to facilitate conversation about the family's strengths and needs in partnership with the family members.

8. Solution focused practice

Solutions are different than services; solutions are more than just referrals.

Documentation for a FAR case must clearly describe the family's identified needs but also include core child welfare concerns. Documentation must also demonstrate clear ways to build on strengths in family functioning and the caregiver's ability to advocate for their family's needs through **identifying solutions**. The caseworker should thoroughly explore with the family the formal and informal supports within the community that may address the family's needs and these discussions should be documented. However, this documentation should clearly demonstrate the level of **mutual understanding** of the need that was achieved and/or the benefit for identified supports. Does the family want this intervention?

Some examples of techniques to use (and document) within solution focused practice include the *miracle question, scaling questions*, the *Three Houses* tool, etc. These questions and family-led activities are designed to elicit the family's view and input regarding their circumstances, what they have tried in the past and what they think will be helpful to them moving forward. Documentation should describe the solution focused techniques used and, based on those techniques, the narrative should provide the family's definition of its issues, needs, goals, ideas and solutions.

CPS/FAR should document any goods or services that are purchased to help meet the family's immediate needs, and should note the source of the funds for the goods or services.

For those FAR cases where a preventive services case already exists, collaboration between the FAR worker, the preventive worker and the family should be ongoing throughout the FAR process and documented in progress notes.

9. Safety and Risk

Safety must be continuously assessed throughout the life of a FAR case.

The risk of future maltreatment and solutions to reduce that risk are a central focus of FAR work with a family, and risk is assessed in a manner congruent with the FAR philosophy. The FAR worker must complete at least one FLAG in CONNECTIONS, which indicates that risk assessment has been addressed, and may complete more than one. The thorough exploration with the family of family functioning, strengths, and needs should be clearly documented in the case record to demonstrate the assessment of future risk. Contacts with parents must include an exploration of any safety and risk concerns. These discussions, including the parents' point of view must be clearly documented in progress notes, as well as the agreements reached about

maintaining safety, decreasing risk and/or improving child well-being. Additionally, the progress notes should indicate the nature of the supervisory case consultation that took place concerning the exploration of safety and risk.

In solution-focused practice, identified needs should be addressed with supportive services that are designed to reduce future risk for children. Documentation should illustrate how any referrals made for formal and/or informal services are linked to risk reduction.

10. Family Led Assessment Guide (FLAG)

A general assessment of the risk of future abuse or maltreatment must be completed for each FAR family. The FLAG is designed to help inform assessment discussions *with* the family by identifying risk and strengths. It is also instrumental in spurring discussion about planning *with* the family about what assistance or services might be helpful in reducing any identified risk and in supporting child well-being.

- The FLAG must be completed in close consultation with the family prior to closing the FAR case, but should be started no later than 30 days after the report is received.
- The process and techniques used to complete the FLAG should be documented in the progress notes. Discussions about what to do with the information or how identified needs and strengths should be addressed should also be documented in progress notes. Information specific to the issues in the FLAG or clarifying those issues are documented in comment fields within the FLAG.
- When a FLAG is completed, the CPS worker should document in progress notes the identified areas of strength within the family as well as concerns that require some degree of action on the part of the family.
- Further FAR intervention should support the areas of need identified in the FLAG; progress notes should describe the association between those areas of need and actions taken.
- Multiple FLAGs can be completed. If a significant change takes place during the agency's involvement with the family, the FLAG should be revised, if it is still open. If the original FLAG has been finalized, then a new FLAG should be completed.

11. Non-custodial or absent parent

There are many situations in this work where children experience an absence from their lives of one of their parents. Efforts should be made to engage the custodial parent in a discussion as to the reasons why the other parent has been absent and to talk about the important role the absent parent could potentially play in children's lives and/or how the non-custodial parent could potentially benefit the children's well-being. This discussion and information pertaining to the absent parent's whereabouts should be clearly documented. Wherever possible, efforts should be made and documented to determine the appropriateness of engaging this absent parent in the FAR process.

The law is clear that non-custodial and out-of-household parents are entitled to receive notification of the existence of a CPS report (including FAR), but there is no legal requirement to further involve them in the FAR intervention. If the non-custodial/out-of-household parent is not named in the report AND the custodial parent is resistant to providing contact information, the FAR worker is relieved from the notification requirement; however, it's expected that the worker will explore and document the reasons for the custodial parent's reluctance.

12. Collateral contacts

Collateral contacts should be made to help assess child safety, risk and family functioning, as well as to assess resources, both professional and non-professional, that may be mobilized to help support the family. Collateral contacts, however, should not be made for obtaining information concerning the validity of allegations. The family should help identify possible collateral contacts and the CPS worker should almost always seek to obtain the family's permission to make collateral contacts. Any contact made with collaterals must be documented in the case record, and the relevance of the information obtained to assessments, decisions and provision of supports should be made clear.

13. Cultural competence

A family's culture has a direct and significant impact on family functioning. Documentation should demonstrate sensitivity to cultural issues within a family such as ethnicity, race, religion, socio-economic status, familial norms, identified community, gender and gender identification, and/or sexual orientation. Case record documentation should identify any situation in which culture plays a significant role in areas such as decision making within the family, discipline practices, child rearing, and overall family dynamics. Where applicable, documentation should capture the caseworker's efforts to work with the family in ways that accommodate the family's cultural needs (e.g.,use of a translator, providing advocacy with systems that are unfamiliar to the family, etc.).

14. Supervision

FAR practice is most successful when sustained by supportive supervision. Case consultation and supervisory guidance provided must be clearly documented either by the FAR caseworker or his/her supervisor. Supervisory comments should be supportive of the FAR process and specify discussions between the caseworker and supervisor and decisions that were made together.

15. Transition / Closing

The decision to end FAR involvement with a family should be a collaborative decision that is clearly documented within the case record.

- Discussions and decisions between caseworker and the family about case closure must be documented.
- Discussions and decisions between caseworker and the supervisor about case closure must be documented.
- Family members are to be left with information and/or supports they can use should they have trouble meeting a need in the future. This must be documented.
- FAR is a family-led process, and can be terminated by the family. If, after the family has collaborated in the assessment, the family decides it no longer wishes to be involved in the FAR process, the CPS must determine if there is evidence of maltreatment or if the children are currently in immediate or impending danger, which are required to call in a new report. These assessments must be clearly documented.
- If the caseworker finds evidence of child abuse or immediate danger during the FAR case, or if the caseworker finds evidence of maltreatment and the parent(s) refuse to cooperate in making needed changes, the caseworker must call in a new report to the Statewide Central Register anddocument this procedure.

- An important FAR concept is the "*warm handoff*" that CPS/FAR should provide when referring a family to a service provider or transferring the case to a new worker. The caseworker should invite the service provider or new worker to meet with the family **and** the caseworker at least once before handing off the case. This can ease the transition for the family, as it provides an opportunity for the caseworker and the family to discuss and demonstrate the family's progress, and gives the new worker a chance to explain to the family what happens next. These efforts should be documented.

Chapter 15: **Glossary of terms**

Abused Child: a child, less than 18 years of age, whose parent or other person legally responsible for his/her care:

- Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- Creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- Commits, or allows to be committed, a sex offense against such child, as defined in the Penal Law allows, permits or encourages such child to engage in any act described in sections 230.00, 230.25, 230.30 and 230.32 of the Penal Law; commits any of the acts described in section 255.25 of the Penal Law; or allows such child to engage in acts or conduct described in article 263 of the Penal Law; provided, however, that the corroboration requirements contained in the Penal Law and the age requirement for the application of article 263 of such law shall not apply to proceedings under article 10 of the Family Court Act (child protective proceedings).

[FCA §1012(e); 18 NYCRR 432.1(a)(1)-(3)]

Case Initiation Date (CID): The first day of a Family Service Stage and the earliest of one of the following events:

- Date of CPS Indication;
- Date of application for services;
- Date of placement; or
- Date of court order.

[18 NYCRR 428.2(a)]

Case Management : The responsibility of the local social services district to authorize the provision of protective services for children, to approve in writing the child and family services plan, and to approve in writing the reports to be submitted to the Statewide Central Register of Child Abuse and Maltreatment (SCR) and the filing of such reports to the SCR.

[18 NYCRR 432.1(m)]

Case Manager: A system role assigned to a local district staff person with the responsibility to authorize the provision of services, approve eligibility determination and approve the FASP. There can only be one Case Manager; however, in instances where the local district is providing services directly, the Case Planner and the Case Manager may be the same individual.

[18 NYCRR 428.2)(b)]

Case Planner: A programmatic and regulatory role, as well as a system role assigned to a local district or voluntary agency staff person who is primarily responsible for coordinating and evaluating services to the family, as well as periodically completing the FASP in a timely fashion. The Case

Planner reviews the work of all other workers who have contributed to the FASP and accepts or revises the information accordingly.

[18 NYCRR 428.2(c)]

Case Planning: Assessing the need for, providing or arranging for, coordinating and evaluating the provision of protective services for children and all other rehabilitative services provided to children named in abuse and/or maltreatment reports and their families. Case planning includes referring child(ren) and his/her family to providers of rehabilitative services, as needed. Case planning responsibility also includes recording in the child's uniform case record that such services are provided and that casework contacts are provided. In addition, case planning includes the timely completion of reports required to be submitted or transmitted to the SCR.

[18 NYCRR 432.1(n)]

Caseload: The number of cases to which an individual CPS worker provides either pre-determination and/or post-determination services or a family assessment response. A case is established through the SCR numbering process and is the result of a report of suspected child abuse or maltreatment being made to the SCR.

[18 NYCRR 432.1(u)]

Caseworker: a programmatic and regulatory role, as well as a system role assigned to a local district or voluntary agency staff person. The caseworker is responsible for completion of specific work within the FASP and may be responsible for a specific child only, multiple children, or no children in the case. There can be multiple caseworkers assigned to a case.

Casework Contacts: Face-to-face contacts with a child and/or a child's parents or guardians, or activities with the child and/or the child's parents or guardians, which may include but are not limited to:

1. Facilitating information gathering and analysis of safety factors;
2. Facilitating information gathering and analysis of the inter-relatedness of risk influences and individual risk elements affecting family functioning;
3. Reaching a determination on the allegations reported to the State central register;
4. Providing necessary protection to the child and/or ensuring the provision of such protection;
5. Providing rehabilitative services to reduce risk to the child and/or ensuring the provision of such services;
6. Evaluating the level of progress being made toward achievement of outcomes set forth in the family and children's service plan; and
7. Assessing family needs and strengths and facilitating the provision of services in conjunction with a family assessment response.

[18 NYCRR 432.1(o)]

Casework Supervision: The provision of guidance and support to a CPS worker in planning and taking actions with or pertaining to a family in the worker's caseload. Actions supervised include, but are not limited to, the initial steps to be taken in response to a report of child abuse or maltreatment, taking protective custody of a child, developing and carrying out a service plan for a family, and deciding when to close a case.

[18 NYCRR 432.1(v)]

CONNECTIONS: The computerized electronic system of record that is used for recording child welfare case information in New York State, including information regarding reports of alleged child abuse and maltreatment and the provision of protective services. This term will also apply to any successor reporting system that may be required by OCFS for recording such information.

[18 NYCRR 432.1(ak)]

Consolidated Investigation: When a subsequent investigation stage is closed by CPS and consolidated into an ongoing, open investigation stage. Consolidating investigations allows streamlining of investigative documentation, but does not exempt CPS from required investigative functions. Consolidation is different from changing a report type to "duplicate."

Controlling Interventions: Activities or arrangements designed to protect a child from unsafe situations, behaviors or conditions associated with immediate danger of serious harm, and without which the unsafe situations, behaviors or conditions would still be present or would be likely to immediately return.

[18 NYCRR 432.1(ab)]

Dispositional Hearing: A hearing for the purpose of determining what order of disposition should be made (e.g., placement, return to parents, order of protection).

[FCA §1045]

Documentation File: Memos and procedures compiled by a local district that support compliance with the statutory and regulatory requirements related to CPS.

[18 NYCRR 432.1(q)]

Duplicate Report: A report of the same incident of suspected child abuse or maltreatment involving the same child(ren), subject and allegations previously reported to the SCR.

Expungement: The physical erasure or obliteration/destruction of information. Generally, expungement is a term used for the destruction of the record of a report and an investigation of child abuse or maltreatment from local child protective services records contained within the CONNECTIONS system, the LDSS external paper record, and any state-maintained section of the record.

Fact-Finding Hearing: A hearing to determine whether a child is an abused or neglected child as defined by the Family Court Act. Determinations at a fact finding hearing are based on a preponderance of the evidence.

[FCA §1044]

Family and Children's Services Plan: The case planning requirements of the uniform case record pursuant to OCFS regulations.

[18 NYCRR 432.1(l)]

Family Assessment and Services Plan (FASP): The electronic documentation of assessments, service planning and service provision provided to a child(ren) and family, as developed and maintained according to uniform case record requirements.

Family Assessment Response (FAR): An alternative child protective response to reports of child abuse and maltreatment in which no formal determination is made as to whether a child was abused

or maltreated and which is based on principles of family involvement and support consistent with maintaining the safety of the child. In family assessment response, the family and child protective service jointly participate in a comprehensive assessment of the family's strengths, concerns, and needs, and plan for the provision of services that are responsive to the family's needs and promote family stabilization, to reduce risks to children in the family.

[18 NYCRR 432.1(ad)]

Family Assessment Response Track: The employment of the family assessment response to address a report of alleged child abuse or maltreatment by using family assessment response-specific processes and practices for the assessment of safety, risk, and family strengths and needs and the development and implementation of solution-focused plans to address identified needs.

[18 NYCRR 432.1(ae)]

Family Led Assessment Guide (FLAG): A tool used in a family assessment response by all members of the family and child protective service staff to jointly identify the family's individual and family strengths, needs and concerns. The contents of the FLAG are specified by OCFS.

[18 NYCRR 432.1(ag)]

Impairment of Emotional Health/Impairment of Mental or Emotional Condition: A state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

[FCA §1012(h)]

Indicated Report: A report made in which an investigation determines that some credible evidence of the alleged abuse or maltreatment exists.

[18 NYCRR 432.1(g)]

Initial Report: A report of suspected child abuse or maltreatment registered by the SCR when there is no previous investigation regarding the child or family open in CONNECTIONS.

Investigative Track: The employment of child protective service procedures, as established in 18 NYCRR 432.2, to address a report of alleged child abuse or maltreatment by using methods of investigation, assessment of safety and risk, and determination of such report as indicated or unfounded.

[18 NYCRR 432.1(af)]

Legally sealed report: A report made to the SCR that was determined to be unfounded based on a lack of some credible evidence or a report made to the SCR that was assigned to the family assessment response track.

[18 NYCRR 432.1(ac)]

Maltreated Child: A child less than 18 years of age whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired because of the failure of his/her parent or other person legally responsible for his/her care to exercise a minimum degree of care:

- In supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of Part 1 of Article 65 of the Education Law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
- In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the parent or other person legally responsible is voluntarily and regularly participating in a rehabilitative program, evidence that the parent or other person legally responsible has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self- control of his actions shall not alone establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.

A maltreated child also may have been abandoned by his/her parents or other person legally responsible for his/her care, or a child who has had serious physical injury inflicted upon him/her by other than accidental means.

[18 NYCRR 432.1(b)(1)-(3)]

Monitor: The employee of the child protective service who is monitoring the services being provided by someone other than the child protective service employee to children named in an indicated case of child abuse and/or maltreatment which is open in the SCR and their families.

[18 NYCRR 432.1(k)]

Monitoring: The active continued involvement of the LDSS's child protective service with those indicated cases of child abuse and maltreatment which are open on the SCR, but where the child protective service worker(s) are not the primary service provider for the case. The purpose of such involvement is to ensure the continued safety of the child(ren) in the case, that risk reduction activities and services are being implemented, and that the service plan is modified when progress has been insufficient.

Neglected Child: A child less than 18 years of age whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care or a child who has been abandoned by his/her parents or other person legally responsible for his/her care.

[FCA §1012(f)]

OCFS: The New York State Office of Children and Family Services or any successor state agency of that or any other name that is responsible for the supervision of CPS in New York State. References to the department also refer to OCFS.

[18 NYCRR 432.1(ai)]

Other Person Named in the Report: Persons who are named in a report of child abuse or maltreatment other than the subject of the report: any child and/or children who are named in a report made to the State Central Register of Child Abuse and Maltreatment and the parent, guardian or other person legally responsible for such child(ren) which parent, guardian or other person legally responsible for such child(ren) have not been named in the report as the person allegedly responsible

for causing injury, abuse or maltreatment to such child(ren) or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child(ren).

[18 NYCRR 432.1(e)]

Person Legally Responsible: The child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

[FCA §1012(g); 18 NYCRR 432.1(c)]

Post-determination: The period beginning with the time a report of suspected child abuse or maltreatment is determined to be indicated and the family continues to receive CPS through the time that the CPS case is closed.

[18 NYCRR 432.1(t)]

Pre-determination: The period between the time a report of suspected child abuse or maltreatment is made and a determination report is submitted or transmitted to the State Central Register.

[18 NYCRR 432.1(s)]

Preliminary Assessment of Safety: An evaluation of safety factors to determine whether the child(ren) named in the report and any other child(ren) in the household may be in immediate danger of serious harm, and, if any child is assessed to be unsafe, undertaking immediate and appropriate interventions to protect the child(ren).

[18 NYCRR 432.1(aa)]

Primary Service Provider: A caseworker who is responsible for both case planning and providing casework contact services to children named in indicated abuse and/or maltreatment reports and their families.

[18 NYCRR 432.1(r)]

Probation Services: Services provided by a probation service that are related to the provision of protective services.

[18 NYCRR 432.1(z)]

Protective Custody: The act of taking and retaining a child or children from a place, or residence, circumstance or condition by a peace officer, a law enforcement official, or an agent of a duly incorporated society for the prevention of cruelty to children, a designated employee of a city or county department of social services or a physician employed by a hospital or similar institution, treating a child, without the consent of a parent or guardian whether or not additional medical treatment is required, if such person has reasonable cause to believe that the circumstances or conditions of the child is such that continuing in his place of residence or in the care and custody of the parent or guardian presents an imminent danger to the child's life or health. The child must be brought to a place approved for such purpose by the local social services department, unless the person is a hospital physician treating the child and the child is or will be presently admitted to a hospital. The hospital physician is required to notify the person in charge of the hospital that he has taken protective custody of the child and requires such person to then become responsible for the further care of the child. Where a child is taken into protective custody a petition must be filed on the next regular week day session of the family court for the child to remain in protective custody.

[FCA §1024(a); SSL §417]

Protective Services for Children: Activities on behalf of children under the age of 18, who are named in an alleged or an indicated report of abuse and/or maltreatment. The following activities may be considered protective services for children:

1. Identification and diagnosis, including assessment of a child's safety and risk to the child of abuse or maltreatment;
2. Receipt of child abuse and/or maltreatment reports and investigation thereof, including the obtaining of information from collateral contacts such as hospitals, school and police;
3. Making determinations, following investigations, that there is credible evidence of child abuse and/or maltreatment;
4. Receipt of child abuse and/or maltreatment reports and the provision of a family assessment response to such reports, including communicating with the family to identify concerns affecting family stability and assisting them to identify services and resources that will minimize future risk to a child;
5. Providing counseling, therapy and training courses for the parents or guardians of the individual, including parent aide services;
6. Counseling and therapy for individuals at risk of physical or emotional harm;
7. Arranging for emergency shelter for children who are suspected of being abused and/or maltreated;
8. Arranging for financial assistance, where appropriate;
9. Assisting the Family Court or the Criminal Court during all stages of a court proceeding in accordance with the purposes of Title 6 of Article 6 of the Social Services Law;
10. Arranging for the provision of appropriate rehabilitative services, including but not limited to preventive services and foster care for children;
11. Providing directly or arranging for, either through purchase or referral, the provision of day care or homemaker services, without regard to financial criteria. Programmatic need for such service must have been established because of the investigation of a report of child abuse and/or maltreatment received by the State Central Register and such services must terminate as a protective service for children when the case is closed with the register, pursuant to the standards set forth in 18 NYCRR 432.2(c);
12. Monitoring the rehabilitative services being provided by someone other than the child protective service worker;
13. Case management services;
14. Case planning services; and
15. Casework contacts.

[18 NYCRR 432.1(p)]

Public Hearing: A hearing held prior to the submission of a local plan in a place and at a time which will allow the maximum number of concerned citizens and professionals to attend. The hearing shall be publicized in a manner which would bring the meeting and its purpose to the attention of the maximum number of agencies and individuals. Notice of such hearings should be publicized at least two weeks in advance through local media and through notices mailed by the local department of social services to appropriate groups, organizations and community agencies. The meeting shall be conducted in such a way as to encourage recommendations from those in attendance.

[18 NYCRR 432.1(h)]

Rehabilitative Services: Those services necessary to safeguard and protect the child's well-being and development and to preserve and stabilize family life, including but not limited to preventive services and protective services for children, provided, however, that no activity relating to the receiving of reports of child abuse and/or maltreatment or the investigation thereof and the determination as to whether or not such a report is indicated or unfounded, or to the family assessment response for such reports, will be considered a rehabilitative service.

[18 NYCRR 432.1(i)]

Risk: The likelihood that a child may be abused or maltreated in the future.

Risk Assessment: An evaluation of elements that pertain to and influence a subject of the report, other persons named in the report and any other children in the household to assess the likelihood that such child(ren) named in the report or in the household will be abused or maltreated in the future.

[18 NYCRR 432.1(w)]

Risk Assessment Profile (RAP): An evidence-based assessment tool, within CONNECTIONS, used to classify the level of risk within a family and thereby the likelihood of future abuse or maltreatment.

[18 NYCRR 432.2(d)]

Safety: Child safety is defined as no immediate threat of serious harm to a child's life or health as a result of acts of commission or omission by the child's parent(s) or other person legally responsible.

Specialized Rehabilitative Services: Assessment, diagnosis, testing, psychotherapy, and specialized therapies provided as a component of a service plan to children named in an indicated child abuse and/or maltreatment report and their families by a person who has received a master's degree in social work, is a licensed psychologist, is a licensed psychiatrist or other recognized therapist in human services or is a licensed or qualified individual including, but not limited to, a registered nurse or an alcohol or substance abuse counselor. Such service providers may be making casework contacts as defined in 18 NYCRR 432.2(b)(3) when the specialized rehabilitative services are directed by, arranged by, or otherwise coordinated by the case planner.

[18 NYCRR 432.1(x)]

State Central Register: The New York Statewide Central Register of Child Abuse and Maltreatment (SCR) or any successor agency that assumes the duties and responsibilities established in Section 422 of the Social Services Law. References to the SCR or the register and any variations of that name also refer to the State Central Register.

[18 NYCRR 432.1(aj)]

Subsequent Report: A report of suspected child abuse or maltreatment registered by the SCR when there is a previous investigation regarding the child or family open in CONNECTIONS.

Supportive Services: Services provided to the children named in an indicated report and/or their families including, but not limited to, parent aide services, homemaker services, or home health aide services, parent training services, housekeeper/chore services; and home management services. Persons providing such services may be making casework contacts as defined in 18 NYCRR 432.2(b)(3) when the supportive services are directed by, arranged by or otherwise coordinated by the case planner.

[18 NYCRR 432.1(y)]

Subject of the Report: Any of the following persons who are allegedly responsible for causing injury, abuse or maltreatment to, or allowing injury, abuse or maltreatment to be inflicted on, a child named in a report to the State Central Register of Child Abuse and Maltreatment:

1. A child's parent or guardian; or other persons legally responsible
2. A director, operator, employee or volunteer of a home operated or supervised by an authorized agency, OCFS, a family day-care home, a day-care center, a group family day-care home, or a school-age child care program; who allegedly is responsible for causing injury, abuse, or maltreatment to a child who is reports to the Statewide Central Register of child abuse or maltreatment, or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child.

[SSL §412(4); 18 NYCRR 432.1(d)]

Some Credible Evidence: Any evidence which is worthy or capable of being believed.

[18 NYCRR 434.10(h)]

Subsequent Report: A report of suspected child abuse or maltreatment registered by the SCR when there is a previous investigation regarding the child or family open in CONNECTIONS.

Unfounded Report: means any report made, unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists. (Editor's note: that is, any report in which a CPS investigation does not find some credible evidence of the alleged abuse or maltreatment.)

[SSL §412(6); 18 NYCRR 432.1(f)]

Wraparound Funding: Flexible and non-categorical funding used for the short-term provision of goods and services to meet family-identified needs, as part of a plan to support the family's ability to provide adequate care to their children and/or to minimize risk for one or more children in their household. The choice of goods and services is individualized to meet the unique needs of each child and family.

[18 NYCRR 432.1(ah)]