

# Chapter 1: Introduction to Child Protective Services

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# 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<sup>1</sup>

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.

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<sup>1</sup> <http://ocfs.ny.gov/main/prevention/CW%20Practice%20Model.pdf>



## C. Definition of protective services for children

Protective services for children<sup>2</sup> 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

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<sup>2</sup> 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)]. CPS 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 CPS 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 to child protective clients. CPS 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).<sup>3</sup> 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.”<sup>4</sup> 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<sup>5</sup>

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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<sup>3</sup> OCFS Division of Human Rights. “Language Access for Individuals with Limited English Proficiency,” accessed at <https://dhr.ny.gov/language-access>

<sup>4</sup> “Provision of Services to Persons with Limited English Proficiency (LEP)” (16-OCFS-INF-05)

<sup>5</sup> “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<sup>6</sup> 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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<sup>6</sup> 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)].