



Office of Children and Family Services

Kathy Hochul
Governor

52 WASHINGTON STREET
RENSSELAER, NY 12144

Suzanne Miles-Gustave, Esq.
Acting Commissioner

Administrative Directive

Transmittal:	24-OCFS-ADM-05
To:	Local Departments of Social Services Commissioners Voluntary Authorized Agencies Executive Directors
Issuing Division/Office:	Office of Strategic Planning and Policy Development
Date:	February 12, 2024
Subject:	Disability Rights New York: Designated Protection and Advocacy System for New York State
Suggested Distribution:	Local Departments of Social Services Directors Adult Protective Services Supervisors Child Protective Services Supervisors Child Welfare Supervisors Detention Administering Agencies Detention Operating Agencies Domestic Violence Residential Program Providers Foster Care Supervisors Staff Development Coordinators Runaway and Homeless Youth Programs Municipal Youth Bureau Directors
Contact Person(s):	See section V.
Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Executive Law § 558 42 U.S.C. § 10801 et seq. 42 U.S.C § 15041 et seq. 42 C.F.R. § 51.1 et seq. 45 C.F.R § 1326.19 et seq.		

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide local departments of social services (LDSSs) and voluntary authorized agencies (VAs) with information on the organization known as

Disability Rights New York (DRNY). Recently, the New York State Office of Children and Family Services (OCFS) has received inquiries from OCFS regional offices regarding DRNY and their authority to conduct site visits and speak to dependent adults and youth in the care and custody or custody and guardianship of LDSSs or OCFS. This ADM provides information about DRNY authority and oversight and the procedures when DRNY requests to monitor compliance or investigate.

II. Background

DRNY is New York State’s designated Protection and Advocacy (P&A) system, with federal and state authority to ensure the protection of the rights of individuals with disabilities. The P&A system includes nine distinct statutory programs to address the needs of different populations of individuals with disabilities, including P&A for individuals with developmental disabilities (PADD) and P&A for individuals with mental illness (PAIMI) under the Protection and Advocacy for Individuals with Mental Illness Act, the Developmental Disabilities Assistance and Bill of Rights Act, and New York State Executive Law §558.¹

III. Program Implications

The information below is in reference to **PADD** and **PAIMI programs only**. For this purpose, “individuals with disabilities” refers to individuals with developmental disabilities and individuals with mental illness.

- Authority to Monitor Compliance and Conduct Investigations

Federal and state laws give DRNY broad authority to monitor service provider locations and investigate abuse and neglect.

- Monitoring Authority: DRNY may access facilities for the purpose of monitoring compliance with the rights and safety of individuals with disabilities, as well as for routine purposes such as providing information, training, and referrals to programs addressing the needs of individuals with disabilities.²
- Investigatory Authority: DRNY has the authority to conduct an investigation if they receive a complaint or if they have probable cause to believe abuse or neglect incidents occurred. Upon receipt of a complaint or probable cause, DRNY has the authority to access upon request any facility providing care, treatment, or services that recently served or serves individuals with disabilities.³ DRNY’s authority is not limited to facilities specifically licensed or certified to serve individuals with disabilities.
- **Note**: Probable cause to conduct an investigation may be a result of DRNY monitoring or other activities, such as observation of personnel, media reports, or reviews of other reports prepared by outside agencies pertaining to the health or safety of individuals with disabilities.⁴

- Authority to Access Programs/Facilities

DRNY is authorized to have “reasonable unaccompanied access” to facilities and individuals within the scope of its authority at all times necessary to conduct a full investigation of an incident of abuse or neglect and for routine circumstances. When access is requested and there are security concerns, reasonable access should be given in conjunction with established program policies and procedures.

¹ 42 USC § 10801 et seq.; 42 USC § 15041 et seq.; Executive Law § 558(b).

² 42 CFR § 51.42(c); 45 CFR § 1326.27(c).

³ 42 USC § 10805; 42 USC § 15043; 45 CFR § 1326.19; 42 CFR § 51.2.

⁴ 42 USC § 10805 (a)(4)(b)(iii); 42 USC § 15043(a)(2)(l).

- *Access for Investigations:* When investigating allegations of abuse or neglect, DRNY is authorized to have access to public and private programs and facilities that render care or treatment for individuals with disabilities. This includes access to all areas that are used by or accessible to individuals with disabilities and residents. No advance notice is required, and access must be made available at all times necessary to complete the investigation.⁵
- *Access for Routine Purposes:* DRNY must be given unaccompanied access to programs for routine purposes during monitoring visits, including to all areas that are used by residents or are accessible to residents at reasonable times, such as normal working hours and visiting hours. Access for routine purposes may be to provide information, training, and referrals for programs to address the needs of individuals with disabilities or information on protection and advocacy services available from DRNY.⁶ Further, DRNY's access can include inspecting, viewing, photographing, and video recording all areas of a program's premises or under the program's supervision or control that are used by or accessible to residents and individuals with disabilities. DRNY **does not** have the authority to photograph or video record individuals with developmental disabilities unless they consent or state laws allow such activities.⁷
- *Access to Individuals (Service Provider Recipients, Residents, and Staff)*

DRNY must be given reasonable unaccompanied access to service recipients and residents, at reasonable times necessary to conduct a full investigation of an incident of abuse or neglect.⁸ "Unaccompanied access" means "the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail, and in person."⁹ Therefore, investigatory authority includes the opportunity to interview any individual with a disability, employee, or other person, including the person thought to be the victim of such abuse, who might reasonably be believed by DRNY to have knowledge of the incident under investigation. DRNY is not required to provide identifying information regarding the individual with a disability or staff with whom it plans to meet, nor is DRNY required to justify or explain its interaction with such persons.¹⁰

- **Note:** DRNY authority includes speaking with minors and adults with disabilities under guardianship.¹¹ DRNY does not need parental or guardian consent to talk to individuals when conducting investigations or monitoring provider sites or facilities. PAIMI programs have the authority to access minors and adults with legal guardians despite any existence of state or local laws that would otherwise restrict access. However, PAIMI programs must make "every effort" to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that DRNY will be monitoring activities and may have access to the minor or adult with a legal guardian.¹²
- *Limits to Access to Individuals*

Overall, DRNY must try to minimize interference with programs, respect individuals' privacy, and honor an individual's request to decline or terminate an interview.¹³

Access to an individual may only be delayed when such access would interfere with the treatment or therapy of the individual. If access to an individual must be delayed more than 24 hours to allow for the provision of treatment or therapy, DRNY must receive access as soon as possible

⁵ 42 CFR § 51.42(b); 45 CFR 1326.27(b)(2).

⁶ 42 CFR § 51.42(c); 42 CFR § 1326.27(c).

⁷ 42 CFR § 51.42(c)(3); 42 CFR § 1326.27(c)(2)(iii).

⁸ 42 USC § 10805; 42 USC § 15043.

⁹ 42 CFR § 51.42(d); 45 CFR § 1326.27(d).

¹⁰ 42 CFR § 51.42(b); 45 CFR § 1326.27(d).

¹¹ 45 CFR § 1326.27(c)(1).

¹² 42 CFR § 51.42(d)-(e).

¹³ 42 CFR § 51.42(c); 45 CFR § 1326.27(c)(2).

thereafter. If a service provider denies access to DRNY on the basis of treatment or therapy, the service provider shall provide, within 24 hours of the request, a written statement from a physician stating that access to the individual will interfere with the individual's treatment or therapy and the time and circumstances under which DRNY can interview the individual.¹⁴

- Access to Records

DRNY has the authority to access individual records related to an investigation¹⁵ when

- the individual or guardian provides consent; or
- the individual lacks capacity, doesn't have a guardian, and a complaint has been received by DRNY regarding the individual, or there is probable cause to believe that such individual has been subject to abuse or neglect; or
- the individual has a guardian, the guardian refuses consent and a complaint has been received by DRNY regarding the individual, or there is probable cause to believe that such individual has been subject to abuse or neglect; or
- DRNY has probable cause to believe the health or safety of an individual is in serious and immediate jeopardy; or
- an individual has died.¹⁶

When DRNY receives a complaint of an incident of abuse or neglect of an individual with a disability, or if there is probable cause to believe that such an incident occurred, DRNY is authorized prompt access at reasonable times¹⁷

- to any facility or part thereof serving such individual that is operated, certified, or licensed by any office or agency of the state;
- to all books, records and data pertaining to such a facility;
- to such individual with a disability in a location in which services, supports, and other assistance are provided to such individual; and
- to any other records that are relevant to conducting an investigation.

DRNY is entitled to individual and investigatory records as well as any other records or data that DRNY determines are relevant to conducting an investigation. The law requires that copies of records be provided free of charge to DRNY as follows:

- in electronic format if maintained in that format;¹⁸
- within three business days of receipt of a written request;¹⁹ or
- within 24 hours of receipt of a written request for access where DRNY determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy or receives a complaint that the health or safety of an individual is in serious and immediate jeopardy, or in the case of the death of an individual.²⁰

If the request cannot be fulfilled within the specified timelines, DRNY must be provided with a statement of the reasons for the delay within one business day after the deadline lapses.²¹

¹⁴ 45 CFR § 1326.27(c)(1).

¹⁵ 42 USC § 10805(a)(4); 42 USC § 15043(a)(2)(I).

¹⁶ 42 USC § 10805(a)(4)(B); 42 USC § 15043(a)(2)(J)(ii)(II).

¹⁷ Executive Law § 558(b)(iii).

¹⁸ 42 CFR § 51.41(c); 45 CFR § 1326.25(b).

¹⁹ 42 USC § 15043(a)(2)(J)(i).

²⁰ 42 USC § 15043(a)(2)(J)(ii).

²¹ 45 CFR § 1326.25(c)(1).

DRNY is permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs. DRNY may make written notes when inspecting information and records and may use its photocopying equipment to obtain copies. If a party other than DRNY performs the photocopying or other reproduction of records, it shall provide the photocopies or reproductions to DRNY within the time frame for record production specified.²²

- Confidentiality

- Records and Documents: DRNY is required to keep all records and documents confidential according to confidentiality requirements of all applicable federal and state laws,²³ including information contained in any automated electronic database pertaining to²⁴
 - clients;
 - individuals who have been provided general information or technical assistance on a particular matter;
 - the identity of individuals who report incidents of abuse or neglect or who furnish information that forms the basis for a determination that probable cause to believe abuse or neglect incidents occurred exists;
 - names of individuals who received services, supports, or other assistance and provided information to DRNY for the record; and
 - peer review records.
- Written Consent: Before releasing information concerning such individuals to those not authorized to receive it, DRNY must obtain written consent from the client (if competent) or their legal representative; individuals who have been provided general information or technical assistance on a particular matter; and individuals who furnish reports or information that form the basis for a determination of probable cause.²⁵
- Reports: Notwithstanding confidentiality requirements of DRNY records, DRNY may make a report to investigative or enforcement agencies that reveals the identity of an individual with a developmental disability and information relating to their status or treatment²⁶
 - when DRNY receives a complaint that the individual has been or may be subject to abuse and neglect or has probable cause to believe that such individual has been or may be subject to abuse or neglect;
 - when DRNY determines there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy; or
 - in any case of the death of an individual whom DRNY believes may have had a developmental disability.

- Potential Outcomes of an Investigation

At the conclusion of an investigation, DRNY may issue a public report of the results, maintaining the confidentiality of any individual named in or having contributed to the investigation. DRNY may also report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the service provider, its staff, or employees possibly warranting sanctions or corrective action. Such information may also be reported to

²² 45 CFR § 1326.25(d).

²³ Executive Law § 558(d)(iv).

²⁴ 42 CFR § 51.45; 45 CFR § 1326.28.

²⁵ 42 CFR § 51.45(a)(3); 45 CFR § 1326.28(b)(3).

²⁶ 45 CFR § 1326.28(d).

agencies responsible for service provider licensing or accreditation, employee discipline, employee licensing or certification, or criminal investigation or prosecution.²⁷

- Differences Between the Justice Center and DRNY Investigations

The New York State Justice Center for the Protection of People with Special Needs (Justice Center) is a state agency that was established to accept and investigate all allegations of reportable incidents involving vulnerable persons at facilities or provider agencies as defined in Social Services Law § 488(4). DRNY provides federal oversight of New York's system of care for individuals with disabilities. DRNY has wide authority to investigate allegations of abuse or neglect of an individual with disabilities by a service provider and address abuse and neglect through litigation, reports, and other forms of advocacy. Additionally, DRNY can have access to records of the Justice Center.²⁸

DRNY is independent and has no obligation to collaborate with or inform the Justice Center of its investigations. At the conclusion of a DRNY investigation, DRNY may make a report to the Justice Center. The findings of a DRNY investigation do not result in a substantiated finding in the Vulnerable Persons Central Register (VPCR) but may result in a report to agencies responsible for service provider licensing or accreditation, employee discipline, employee licensing or certification, or criminal investigation or prosecution.²⁹

IV. Required Action

As the P&A system for New York state, DRNY has access authority to carry out the mandate to investigate abuse and neglect and protect and advocate for the rights of individuals with disabilities. If it is requested by DRNY, then LDSSs and VAs must, in accordance with the guidance outlined in section III, give DRNY access to the following:

- All areas of a facility or program used by service recipients/residents.
- Any individual service recipient/resident at all reasonable times.
- Information and records maintained by the facility or program as applicable.

If requested access to facilities, programs, residents, or records is delayed or denied, a written statement of the reasons for the denial or delay must be provided to DRNY, regardless of whether DRNY has probable cause to suspect abuse or neglect or has received a complaint. For cases where DRNY is denied based on a deemed lack of authorization, the name, address, and telephone number of individuals with disabilities and legal guardians, conservators, or other legal representative needs to be included in the written statement.³⁰

V. Contacts

Any questions concerning this release should be directed to the appropriate office at OCFS:

Buffalo Regional Office – Amanda Darling (716) 847-3145

Amanda.Darling@ocfs.ny.gov

Rochester Regional Office – Chris Bruno (585) 238-8201

Christopher.Bruno@ocfs.ny.gov

Syracuse Regional Office – Sara Simon (315) 423-1200

²⁷ 42 CFR § 51.45(b)(2); 45 CFR § 1326.28(c).

²⁸ Executive Law § 558(b)(iii).

²⁹ 45 CFR § 1326.28(c).

³⁰ 42 CFR § 51.43; 45 CFR § 1326.26.

Sara.Simon@ocfs.ny.gov

Albany Regional Office – John Lockwood (518) 486-7078

John.Lockwood@ocfs.ny.gov

Westchester Regional Office – Sheletha Chang (845) 708-2498

Sheletha.Chang@ocfs.ny.gov

New York City Regional Office – Ronni Fuchs (212) 383-1788

Ronni.Fuchs@ocfs.ny.gov

Native American Services – Heather LaForme (716) 847-3123

Heather.LaForme@ocfs.ny.gov

Close to Home and Detention – Donte Blackwell (212) 383-7261

Donte.Blackwell@ocfs.ny.gov

Runaway and Homeless Youth – Sonia Tate (212) 383-4704

Sonia.Tate@ocfs.ny.gov

Bureau of Adult Services – Julie Kelleher (518) 486-7010

Julie.Kelleher@ocfs.ny.gov

VI. Effective Date

This release is effective immediately.

/s/ Thomas R. Brooks, Esq.

Issued by:

Name: Thomas R. Brooks, Esq.

Title: Deputy Commissioner

Division/Office: Office of Strategic Planning and Policy Development