



Office of Children  
and Family Services

KATHY HOCHUL  
Governor

SUZANNE MILES-GUSTAVE, ESQ.  
Acting Commissioner

June 23, 2023

Darlene Ward  
Welfare Research Inc.  
14 Columbia Circle  
Suite 104  
Albany, NY 12203

Dear Ms. Ward:

The New York State Office of Children and Family Services (OCFS) has received the New York State Citizen Review Panels' (the Panels) 2022 Annual Report, *Child Protection in New York State: A New Paradigm; From Mandated Reporters to Mandated Supporters*. We share the Panels goal to transform the child welfare system with a focus on robust, community-based, culturally responsive, and accessible primary prevention services to support families and decrease the need for child protective intervention, to the extent possible.

OCFS recognizes the history of systemic negative impacts of the child welfare system, including the over representation of children and families of color and the conflation of poverty and neglect reporting, and is making historic policy and practice shifts to address these issues. Notwithstanding, OCFS is also tasked with the protection of children who are abused and maltreated by their parents or other persons legally responsible for them and offering protective services to those children and their families. It is within that space that child welfare must exercise our mandates and due diligence in the protection of children.

The Panels' report outlines recommendations for system change directed to both the state legislature and OCFS, and this response mainly addresses those specific to OCFS policy and practice with some information relevant to the Panels' legislative asks. OCFS is committed to discussions with the state legislature on all the Panels' recommendations and is exploring implementation of all the recommendations outlined in the report.

OCFS has begun the work of transforming the child welfare system, with many recent changes aligned with the Panels' recommendations, which are detailed below. This work reflects the agency commitment to narrow the front door to reporting families to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR).

**I: Recommendation: Reduce unnecessary investigations of children and families by CPS—  
narrow the front door**

The Panels recommend that to reduce unnecessary child protective investigations of children and families, OCFS should amend its mandated reporter training to educate on the harm of unnecessary reporting, eliminate inadequate guardianship as a reportable allegation of maltreatment, and ensure

that reports of neglect accepted by the State Central Register are not based on issues or concerns related to poverty. OCFS agrees with these recommendations and has moved to make these system changes through the agency Family First Prevention Services Plan and its newly released updated mandated reporter training, as detailed below. The elimination of any statutory language of the Family Court Act, including changing the definition of neglect and removing inadequate guardianship as an allegation will be explored through agency and legislative discussions, as these decisions cannot be unilaterally made by OCFS.

### New York State's Approved Prevention Plan

New York State's Family First Prevention Services Act (FFPSA) Prevention Plan was approved by the Administration for Children and Families (ACF) on August 2, 2022. It is a bold vision for modernizing child welfare, centered on strengthening and investing in parents, families and communities, and intentionally tackling inequities and disparities in the social determinants of health – poverty; lack of affordable quality child care; education barriers; housing instability; food insecurity; lack of affordable, quality physical and mental health care; intimate partner violence; maternal depression; family mental illness; substance use disorder; and discrimination – which are identifiable root causes that bring families to the attention of child welfare.

With access to new Title IV-E federal prevention funding, a continued state commitment to open-ended prevention funding (62/38) and realigned state funding, deepened government partnerships, and a public health perspective, we can transition from a child-centric system to a family and child well-being system. We know, and the data confirms, that a child's connection to their family is paramount to healthy family bonds and provides the foundation upon which safety, permanency, and well-being can truly be achieved. To that end, we have begun to reimagine our system to be one in which we:

- embrace listening to parents, youth, and kin caregivers as they tell us what they want and need;
- marshal our own resources and the resources across the public platform and in communities to address those needs from a public health perspective;
- embrace diversity, equity, inclusion, and accessibility (DEIA) recognizing the disparate impact our policies have had on people with varied racial, ethnic, gender, and socio-economic status by providing opportunities for individuals to gain access to a wide range of resources and services across all sectors;
- deploy evidence-based practices designed to strengthen and support families; and
- invest in community-based programs which reflect the communities they serve.

### SCR Reform

On January 1, 2022, the law commonly referred to as “SCR Reform”, went into effect. The primary purpose of SCR Reform is to address racial, socioeconomic, and other disparities in the CPS system while improving outcomes for families and promoting child safety. The three components of SCR Reform are:

1. Raised the evidentiary standard to indicate a CPS report from “some credible” evidence to “fair preponderance” of evidence, which is a stricter standard.
2. Maltreatment Reports that are over 8 years old are now automatically designated “Not Relevant or Reasonably Related to Employment, Foster Care or Adoption”.<sup>1</sup> If applicable, the maltreatment report cannot be disclosed in response to a requested SCR database check related to continued or potential employment, licensure for specified occupations working with children or vulnerable adults, or obtaining certification or approval to become a foster or an adoptive parent or successor.

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<sup>1</sup> NYS Social Service Law Section 424-a

3. An appeal of a finding of an “indicated” case against a parent or person legally responsible that includes a related pending Article 10 family court case will be paused until the conclusion of the court case. When the case has concluded, the court’s decision will create an irrebuttable presumption for the OCFS appeal when the allegations in the CPS report, the Article 10 petition, and the Article 10 disposition are aligned. This change allows the outcome of the court case, including a dismissal, to be considered in the appeal determination.

#### The New Mandated Reporter Training

In 2022, OCFS relaunched its mandated reporter training with the theme “you don’t have to report a family to support a family”. The updated training includes protocols to reduce implicit bias in the decision-making processes, strategies for identifying adverse childhood experiences and guidelines to assist in recognizing signs of abuse or maltreatment while interacting virtually. The update also focuses on helping mandated reporters identify when concerns do not rise to a level that legally requires a report be made to the SCR. The training helps mandated reporters determine whether a family could be supported by culturally responsive, effective, and community-based program referrals available through OCFS’ new H.E.A.R.S. family line (Help, Empower, Advocate, Reassure and Support). Anyone can call 1-888-55HEARS (1-888-554-3277) Monday through Friday from 8:30 a.m. – 4:30 p.m. to be connected to a supportive service. OCFS will continue to consider other substantive updates to the training as appropriate, including examining allegations of maltreatment related to inadequate guardianship.

#### **II. Recommendation: Reduce harmful practices in CPS investigations.**

The Panels recommend that legal counsel be provided to parents at the onset of child protective investigations and recognizes that the New York State Unified Court System has promulgated court rules that reflect availability of assignment of counsel for parents or persons legally responsible in relation to a proceeding where there is a risk of a child removal from their home.

Social justice and racial equity are an integral part of our agency framework as we look at transforming the NYS child welfare system. OCFS supports parental awareness of their rights, including the right to legal representation throughout all phases of child welfare involvement. OCFS has engaged with the Office of Court Administration (OCA) on the implementation of the parent representation court rule and recognizes that local social service districts and their corresponding local family courts have begun partnerships to comply with the court rule.

Additionally, OCFS continues to collaborate with the Office of Court Administration and the Office of Indigent Legal Services (ILS) on legal representation for families. Recently, three webinars were held in collaboration with ILS that focused on how counties can obtain additional Title IV-E funding to provide enhanced legal representation to families involved in the child welfare system. Moreover, our policy, *Title IV-E Reimbursement for Legal Representation Services for Children and Parents in Child Welfare Proceedings* (21-OCFS-INF-05), reinforces OCFS’ commitment to representation for parents in child welfare proceedings. OCFS will continue to explore whether there is a need for a statewide policy or practice as the family courts work on implementation of their court rule.

Related, OCFS is exploring the development of a series of “Know your Rights” brochures that will provide information to caretakers about their rights when there is a CPS investigation, their child(ren) are removed from their care and placed in foster care, as well as information on prevention services in New York State. OCFS believes this is an integral part of supporting a parent’s rights to transparency, being informed, and advocacy.

### **III: OCFS information for Panel Legislative Requests:**

#### **Equity Services outside of CPS**

OCFS continues to support Family Assessment Response (FAR), NYS alternative response program to certain child protective reports that meet the criteria. As you may be aware, FAR program removes the intensive investigatory requirements to provide the family with a more solution focused response to an SCR allegation that supports family stabilization.

All counties are encouraged to implement FAR in their CPS practice. The SCR has implemented the "FAR Flag" on eligible reports, which provides all counties, even those that do not utilize FAR, with an indicator that the report could be a candidate for FAR. We believe that the notifications will provide districts with more data from which to make a more informed decision regarding adopting FAR in their counties. On May 15, 2023, local departments of social services (LDSSs) were invited to a webinar entitled, *New York State Family Assessment Response (FAR): Enhancing the well-being of children, families, (and our workforce!) through differential response*. The webinar promoted the benefits and values of a differential response system in New York State using a combination of data and perspectives from OCFS, as well as outcomes information from several FAR participating counties. Since the webinar, several additional counties have expressed an interest in FAR.

#### **Degree Requirement for Caseworkers**

OCFS recognizes the significant challenges experienced by LDSSs in recruiting and retaining CPS staff. Requiring a bachelor or master's degree in social work for most caseworkers would limit the pool of potential candidates and could make it even more challenging for LDSSs to find and retain qualified staff. Looking at the example of other states, including Maryland, Utah, and just recently Pennsylvania, there is movement to allow work experience to be substituted for some or all degree requirements. OCFS is working with the New York State Department of Civil Service to move from the current civil service exam for child welfare workers to a qualifying criterion of training and experience, coupled with behavioral interviewing. This new approach allows local districts the ability to ask focused, behavioral-related questions to help determine if the candidate is a good fit for the position. This approach has been seen by local districts as a favorable change to the current testing and hiring practice to achieve the desired workforce.

Additionally, OCFS is exploring investments in supporting internships for BSW and MSW students, as a means of recruiting, retaining, and building a qualified workforce. OCFS is fortunate to have a long and beneficial partnership with the Social Work Education Consortium (SWEC). The program provides opportunities for caseworkers to obtain their BSW and/or MSW while working for the county, and OCFS is exploring expanding the number of opportunities available so more staff can take advantage of the program.

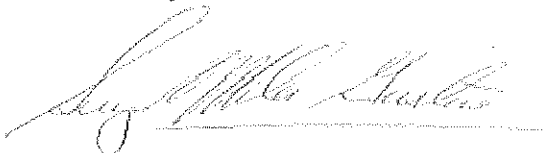
#### **Educational Neglect**

OCFS continues to work collaboratively with the NYS Education Department (SED) to identify and provide resources to school personnel and child welfare workers. Along with SED, OCFS has provided webinars to school personnel and child welfare workers to help them better understand the role of the SCR regarding educational neglect, how to share data with each other, identify situations when a report of educational neglect should be made, and when to provide support to a family by identifying and utilizing community-based strategies and services. To support bolstering the continuum of community-based supports, OCFS and SED have partnered in issuing an RFP for Family Opportunity Centers (FOCs). The centers are aimed at improving the safety and well-being of children and families by addressing issues of poverty, education barriers, substance use disorders and lack of adequate physical and mental health care. As part of the objective to narrow the front door to the child welfare system, OCFS will continue to examine the parameters of educational neglect.

**Conclusion**

OCFS is focused on fulfilling the mission of our agency in the protection of children while mitigating the harmful impacts for children and families. OCFS is committed to continuing discussions with the Panels regarding these concerns and how we move forward in a way that protects children, balances parents' rights, and minimizes harm and trauma. Once again, I thank you for your recommendations and look forward to continuing our partnership in promoting the welfare of children and families in New York State.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne Miles-Gustave", written over a horizontal line.

Suzanne Miles-Gustave, Esq.  
Acting Commissioner