

SUBJECT: Protecting Children in Residential Care from Abuse and Neglect

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**IMPLEMENTATION RESPONSIBILITY:
Children's Services Divisions of Child Protection
and Family Permanency, and Foster Care
Provider Agency Staff in Residential Facilities**

PURPOSE: As Children's Services and provider agency staff work to ensure the well-being of all children in foster care, we should be aware of new state standards for identifying and investigating abuse and neglect of children in residential care. This policy is based upon changes in state law and regulation, as described by the Office of Children and Family Services (OCFS).¹ As such these new guidelines should be incorporated into our work to ensure the safety of children in residential care.

SCOPE: This guidance applies to Children's Services Divisions of Child Protection and Family Permanency staff and all foster care provider agency staff at residential care facilities. It should inform staff's work to prevent, identify and respond to actual or suspected abuse or neglect of a child in residential care. These guidelines are effective immediately.

POLICY: All ACS and provider agency staff are expected to follow sound professional judgment, best practice and ACS and New York State standards for ensuring the safety of children and youth in residential care. Recent state legislation introduced new definitions and procedures which will guide and inform the state's investigation of all reports for children and youth in residential care facilities. These supplement Children's Services' own response to such incidents and expectations of provider agencies.

DEFINITIONS

Provider agencies and Children's Services staff should be aware of new definitions in effect to identify potential abuse/neglect of a child in residential care.

The operating definitions of "*abused child in a residential care*" and "*neglected child in residential care*" have been substantially revised to describe particular injuries, risks of injury and conduct which, if experienced or committed, may lead to the conclusion that a child in residential care is abused or neglected.

Additionally, the definitions of "*physical injury or impairment*," "*mental or emotional injury or impairment*," and "*residential care*" have been clarified. Please see Appendix A for a complete list of these definitions.

¹ Pursuant to Chapter 323 of the Laws of 2008 and amended Part 433 regulations. These changes are further clarified in OCFS's Informational Letter, 09-OCFS-INF-02, issued March 5, 2009.

TIMEFRAMES

Provider agencies and Children's Services staff should be prepared to respond to and work with the Office of Children and Family Services Institutional Abuse Unit (OCFS/IAB) in its investigation of suspected abuse or neglect, and to be aware of the following timeframes:

Within 60 days of receiving a report of abuse or neglect of a child in residential care, the OCFS/IAB must make the following determinations:

- a) whether the report is indicated or unfounded;
- b) whether there is a basis for a familial report to the SCR (see *Children's Services Response* page 3 for further information). If so, OCFS/IAB must make a separate report to the State Central Register, unless such a report has already been made;
- c) whether it appears likely that a crime was committed against the child. If so, OCFS/IAB must transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted; and
- d) whether it appears that there was a statutory or regulatory violation relative to the care and treatment of individuals receiving services.

STANDARDS FOR INDICATING REPORTS

The OCFS/IAB will employ specific standards to guide its investigation of reports of abuse and neglect. Provider agencies and Children's Services staff should be aware of these criteria to inform their own work to both prevent and respond to suspected abuse and neglect of children in their care.

As explained in recent State-issued guidance, in order to determine if a report can be indicated for abuse or neglect of a child in residential care, OCFS/IAB staff will be looking for some credible evidence that a specific custodian is responsible (in whole or in part) for any of the following:

1. Did the custodian commit, promote or knowingly permit the sexual abuse of a child?
2. Did the custodian subject a child to any of the forms of abuse as listed in Appendix A that are considered to be abuse regardless of whether the child sustained an injury or was placed in substantial risk of injury?
3. Did the custodian subject a child to the intentional administration of a prescription or non-prescription drug other than in substantial compliance with the prescription or order?
4. Did the custodian cause injury or impairment to a child or cause substantial risk of injury or impairment by:
 - a) direct action,
 - b) conduct with knowledge or deliberate indifference that allowed any such injury, impairment or risk,

- c) failing to exercise a minimum degree of care,
- d) failing to comply with a rule or regulation involving care, services or supervision of a child where it was reasonably foreseeable that such failure would result in the abuse or neglect of a child,
- e) failing to meet a personal duty imposed by an agreed-upon plan of prevention and remediation arising from abuse or neglect of a child in residential care.

REPORTING AND RESPONDING TO INDICATED REPORTS

The OCFS/IAB will take particular steps in reporting on any findings of abuse or neglect, and also will expect specific action to be taken by the provider agency:

1. If a report is indicated (or, it appears a crime was committed against a child, or there was a violation of the statutory, regulatory or other licensing requirements relative to the care and treatment of individuals) then OCFS/IAB must:
 - a) report its findings to the director of the facility and to the appropriate licensing or operating state agency or, if within OCFS, to the appropriate OCFS/IAB staff; and
 - b) recommend to the facility and the licensing state agency that appropriate preventive and remedial actions, if any, be undertaken with respect to a residential care facility and/or the subject of the OCFS/IAB report.
2. Additionally if a report is indicated as described in #1 above the provider agency must, within a reasonably prompt period of time², initiate any necessary and appropriate corrective action, and send a written report to OCFS/IAB of the actions taken to address OCFS' finding and such subsequent progress reports as OCFS may require, including any actions to implement a plan of prevention and remediation.
3. **Children's Services Response.**
In situations when OCFS IAB reports in their findings of their initial investigation, that the abuse or neglect occurred when the foster child was visiting with his parent or guardian, the residential care facility Director must call in a new report to the SCR. The SCR will transmit this new report to Children's Services Division of Child Protection (DCP). Because this is now deemed a familial type of investigation, the child protective specialist must follow the appropriate CPS protocols, policies and procedures as outlined in the CPS Guide.³

For additional information please contact Melody Grissom, Deputy Director of the Policy and Procedures Unit at (212) 341-2848.

² According to NYCRR 433.4 (3) such plan must be submitted upon the date required by staff of the appropriate regional office; however, such plan will not be required to be submitted sooner than 10 business days nor later than 20 business days after the director or operator of a facility or program is informed that a report of child abuse or neglect is indicated.

³ Also please refer to ACS Guidance 2008/07 for further information on Mandated Reporter Requirements.

The following list from 09-OCFS-INF-02 *Institutional Abuse Provisions: Chapter 323 of the Laws of 2008* provides the definitions as found in State law¹ of an abused child in residential care, a neglected child in residential care, physical injury or impairment, mental or emotional injury or impairment, and residential care.

I. Abused Child

An “**abused child in residential care**” is one who is subjected to the following acts, regardless of whether the child is injured, unless the action is accidental or is done as an emergency physical intervention to protect the safety of the child or another person:

- 1) being thrown, shoved, kicked, pinched, punched, shaken, choked, smothered, bitten, burned, cut, or struck;
- 2) the display in a threatening manner of a weapon or other object that could reasonably be perceived as being meant to inflict pain or injury;
- 3) the use of corporal punishment;
- 4) the withholding of nutrition or hydration as punishment; or
- 5) the unlawful administration of any controlled substance or alcoholic beverage.

Note: For all of the above actions, the statute presumes that such actions create risk of injury. Proof that a child was injured or placed at substantial risk of injury is not required.

OR

An abused child in residential care is one who has had inflicted upon him/her a reasonably foreseeable injury that causes death or creates a **substantial risk** of:

- 1) death;
- 2) serious or protracted disfigurement;
- 3) serious or protracted impairment of the child’s physical, mental or emotional condition; or
- 4) serious or protracted loss or impairment of the function of any organ.

OR

An abused child in residential care is one who is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause:

- 1) death;
- 2) serious or protracted disfigurement;
- 3) serious or protracted impairment of the child’s physical, mental or emotional condition; or
- 4) serious or protracted loss or impairment of the function of any organ.

OR

An abused child in residential care is one who is the victim of sexual abuse

¹ SSL §412-a.

(including sex offenses, use of a child for purposes of prostitution, use of a child for a sexual performance, and incest). However, the corroboration requirements of the Penal Law and the age requirements or age-based elements of any such crime do not apply to this definition.

Note: As under previous law, no proof of injury or substantial risk of injury is needed for an allegation of sex abuse.

II. Neglected Child

A “**neglected child in residential care**” is a child who is *impaired* physically, mentally or emotionally *or is at substantial risk* of impairment because of the failure to receive:

- 1) adequate food, clothing, shelter, medical, dental, optometric or surgical care consistent with the applicable rules and regulations of the licensing or operating state agency, provided that the residential facility has reasonable access to the provision of such services and that necessary consents for health care have been sought and obtained;
- 2) access to educational instruction in accordance with the compulsory education provisions in the Education Law;
- 3) proper supervision or guardianship, consistent with the applicable rules and regulations of the licensing or operating state agency.

OR

A neglected child in residential care can also mean a child who *is inflicted* with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, *or is subjected to the risk of* a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, *where such injury or risk of injury was reasonably foreseeable.*

OR

A neglected child in residential care can also mean a child who *is inflicted* with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, *as a result of a failure to implement an agreed upon plan of prevention and remediation.*

OR

A neglected child in residential care can also mean a child who is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

III. Physical Injury or Impairment

“**Physical injury or impairment**” and “impairment of physical condition” are defined to mean any confirmed harm, hurt or damage resulting in a significant

worsening or diminution of a child's physical condition.

IV. Mental or Emotional Injury or Impairment

"Mental or emotional injury or impairment" and "impairment of mental or emotional condition" are defined to mean a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

V. Residential Care

"Residential Care" means:

- (a) care provided to a child who has been placed by the family court with Children's Services or OCFS, or whose care and custody or custody and guardianship has been transferred or committed to, Children's Services, another authorized agency, or OCFS and such care is provided in an agency operated boarding home, a group home or child care institution;
- (b) care provided to a child in a facility or program operated or certified by OCFS pursuant to article nineteen-G or nineteen-H of the executive law, excluding foster family care;
- (c) care provided to a child in the New York state school for the blind or the New York state school for the deaf;
- (d) care provided to a child in a private residential school which is within the state and which has been approved by the commissioner of education for special education services or programs;
- (e) care provided in institutions for the instruction of the deaf and the blind which have a residential component, and which are subject to the visitation of the commissioner of education;
- (f) care provided through a residential placement of a child with a special act school district;
- (g) care provided to a child in a residential facility licensed or operated by the office of mental health, excluding family care homes;
- (h) care provided to a child in a residential facility licensed or operated by the office of mental retardation and developmental disabilities, excluding family care homes;
- (i) care provided to a child in an inpatient or residential setting certified by the office of alcoholism and substance abuse services (OASAS), which has been specifically designated by such office as serving youth; or
- (j) care provided to a child by an authorized agency licensed to provide both care enumerated in paragraph (a) of this subdivision and care defined in paragraph (g), (h) or (i).

Note that "residential care" now includes inpatient or residential settings certified by OASAS and designated as serving youth. This adds OASAS residential facilities serving youth to the jurisdiction of OCFS/IAB. OCFS/IAB investigations at OASAS facilities will be the responsibility of NYS Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), except for any stand-alone residential programs certified by OASAS on the same premises as a foster care facility licensed by OCFS, which will be the responsibility of OCFS.