

Professional Services:

No professional services will be required of local governments. Small business may need to utilize or hire law professionals, accounting professionals, or other financial professionals to assist in inspections, investigations, or proceedings as proposed in this rule.

Compliance Costs:

There are no small business entities which are currently licensed that will be affected by this emergency rule. The emergency rule does not impose an economic impact on any existing lawful small business entity. Entities or persons that commit violations outlined in the Cannabis Law, other related regulations, and the regulations proposed in this rule may be subject to civil penalties and fees that include a cost. There may be additional costs to licensed entities if the Office finds such entity must initiate a corrective action plan because of a violation, if the entity wishes to enter a conciliation conference or must agree to a hearing, or if the licensed entity wishes to cure.

Economic and Technological Feasibility:

This emergency rule is economically and technologically feasible. The operations of the Office implementing hearings and bolstering hearings and enforcement do not impose any unique technological or economic challenges to small businesses or local governments.

Minimizing Adverse Impact:

This emergency rule will expand the Office's ability to ensure a level playing field for the cannabis industry through enhanced violations and a bolstered hearings and enforcement process. This rule will provide a fair and impartial hearing process that respects all parties throughout, overseen by an administrative law judge. These regulations do not create an adverse impact to small businesses and local governments, unless small business entities that are licensed by the Office commit any violations.

Small Business and Local Government Participation:

The emergency rule was developed in response to feedback from multiple organizations, state agencies, and advocates and who have provided feedback and suggestions for implementation of violations, hearings, and enforcement. There will be a 60-day public comment period with the proposed regulations that will allow for additional comments to be considered.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

Outside of major cities and metropolitan population centers, most counties in New York State contain rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

There are no new reporting, recordkeeping or other compliance requirements imposed on rural areas because of the regulations. No new professional services will be required specifically of rural areas. Compliance requirements will be limited to the Office, administrative law judges, entities licensed by the Office, and unlicensed entities who are not in compliance with the Cannabis Law, regulations, and related guidance.

Costs:

There are no compliance costs to existing establishments in rural areas since no new compliance activities are imposed upon them. Compliance costs will be limited to the Office and to licensed entities and unlicensed entities who commits a violation and/or who may be subject to conciliation conference, corrective action, or hearings.

Minimizing Adverse Impact:

The emergency rule will apply to individuals, licensed entities, and unlicensed entities who commit violations and/or may be subject to conciliation conference, corrective action, or hearings. Applicants in rural areas of the state, as well as other areas of the state, will be able to obtain information regarding violations and the hearing process online. Any hearing called pursuant to this emergency rule will be held at a location which the administrative law judge overseeing such hearing chooses.

Rural Area Participation:

The emergency rule was developed in response to feedback from multiple organizations, state agencies, and advocates and who have provided feedback and suggestions for the implementation of violations, hearings, and enforcement. There will be a 60-day public comment period with the proposed regulations that will allow for additional comments to be considered.

Job Impact Statement

The emergency rule will allow for the creation of new jobs to support the activities of entities licensed by the Office of Cannabis Management by ensuring the success of a regulated cannabis industry through a robust yet responsible enforcement process that includes violations for licensed and unlicensed entities, and a fair and impartial hearing process that respects all parties throughout. By ensuring the regulated cannabis industry is on a level playing field through such enforcement, this emergency rule will allow jobs in this new industry to be created and bolstered. This Office has determined that there are no foreseeable adverse impacts on jobs.

Office of Children and Family Services

EMERGENCY RULE MAKING

Differential Response for Children Under 12 Years of Age

I.D. No. CFS-36-22-00002-E

Filing No. 947

Filing Date: 2022-11-16

Effective Date: 2022-11-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 437 to Title 18 NYCRR.

Statutory authority: L. 2021, ch. 810

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of children in New York State. Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, raised the lower age of juvenile delinquency to age 12 for most offenses and requires the Office of Children and Family Services (OCFS) to promulgate regulations to establish a differential response for those children for whom there is no longer jurisdiction under Article 3 of the Family Court Act. Each local department of social services is required to submit a differential response plan to OCFS for review and approval prior to December 29, 2022. These differential response programs are necessary to reduce the likelihood of interaction with the juvenile justice and child welfare systems in the future for eligible children.

Subject: Differential Response for Children Under 12 Years of Age.

Purpose: To establish a differential response program for children under twelve years of age.

Text of emergency rule: NYCRR Part 437

Differential Response for Children Under Twelve (12) Years of Age

Section 437.1 Legal Authority

This subpart is established pursuant to Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, which provides that the Office of Children and Family Services shall promulgate regulations regarding the differential response for children under 12 years of age who do not fall under the definition of juvenile delinquent under section 301.2 of the Family Court Act, but whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

Section 437.2 Definitions

(a) *Child Welfare Services Plan means the district-wide plan, as required under 409-d of the Social Services Law.*

(b) *Differential Response Program means a program established under these regulations for eligible children under 12 years of age.*

(c) *Eligible child means a child under 12 years of age, who does not fall under the definition of juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the Family Court Act and whose behavior, but for their age, would bring them within the jurisdiction of the family court pursuant to Article 3 of the Family Court Act.*

(d) *Family shall include but not be limited to biological relationships; relationships through marriage, partnership, or adoption; caretakers of the child; siblings; adults with a positive relationship to the child or child's family; caretakers of any siblings; or other persons whom the eligible child or their family may consider to be critical supports.*

Section 437.3 Program Requirement

All local social services districts (districts) are required to establish a differential response program for the eligible children within the district. Services offered through the differential response program are voluntary to the eligible child and their family. Details of the program and the implementation plan must be reflected in the district child welfare services plan.

Section 437.4 Plan Requirement

Districts must include details of their differential response program for children under 12 years of age in their child welfare services plan. Such information must include, but is not limited to the following:

(a) A description of how the differential responses will enhance the ability of the district to reduce the likelihood of the eligible child's interactions with the juvenile justice and child welfare systems in the future and ensure the safety and well-being of the eligible children. Such description should also include how any family needs and concerns will be supported.

(b) A description of how such differential response addresses adverse impacts on marginalized communities.

(c) A description of the assessments that shall be utilized to determine whether services are necessary and if necessary, the least restrictive interventions that meet the needs of the eligible child and their family. Such tools shall include, but not be limited to, assessment of the eligible child's and their family's strengths, concrete needs, and challenges. Such assessments should consider any individualized vulnerabilities and be responsive to the child and their family's culture.

(d) A description of services and supports to be provided to the eligible child and their family to include but not be limited to preventive services, if eligible, in accordance with Social Services Law Section 409-a and 18 NYCRR Part 423, and family support services programs as defined in 458-m as required or available, and how the services will be offered. Services offered through the differential response are voluntary and must be identified as such in the plan.

(e) A description of the process to be followed for how the district will plan and monitor the services provided under the differential response.

(f) A description of the training to be required for staff engaged in implementation of the differential response. This includes training for district and relevant non-district staff who will be working with eligible children and their families. Such description shall include the training for law enforcement within the district whose main responsibilities are juveniles, pursuant to section 840 of the Executive Law.

(g) A description of any additional funding that shall be made available to enhance the differential response.

Section 437.5 Records, Retention and Confidentiality

Records created under a district's differential response program shall:

(a) include, at a minimum, information regarding the reason(s) the child was referred to the differential response program, documentation of all services offered and accepted by the eligible child and their family, and all evaluations and assessments of that child's progress; and

(b) be maintained for five (5) years after an eligible child has been referred to the district or until the eligible child reaches the age of 12, whichever is sooner. The district shall destroy differential response program records when they reach the retention benchmark.

Records are confidential and shall not be disclosed except as set forth in section 458-o(3)(c) of the Social Services Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. CFS-36-22-00002-EP, Issue of September 7, 2022. The emergency rule will expire January 14, 2023.

Text of rule and any required statements and analyses may be obtained from: Lisa Vasnani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 474-8310, email: regcomments@ocfs.ny.gov

Regulatory Impact Statement

1) Statutory Authority:

Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, requires that the Office of Children and Family Services (the Office) shall promulgate regulations regarding the differential response for children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act as of December 29, 2022, but for whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of the Office to establish regulations for the administration of public assistance and care within New York State.

2) Legislative Objectives:

To establish differential response programs for children under the age of 12 in order to reduce the likelihood of the eligible child's interactions with the juvenile justice and child welfare systems in the future.

3) Needs and Benefits:

These regulations are required under by Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022. They require local social services districts (districts) to establish a differential response program for eligible children, provide standards around that differential response as well as regarding records, retention, and confidentiality.

The legislation and regulations are an opportunity to be responsive to children and their families using developmentally focused, equity-centered

community alternatives and early interventions that address concerning or harmful behavior through age- and stage-appropriate means. Emphasis is placed on family engagement and providing necessary assistance and opportunities to the child using positive youth development, restorative, and trauma-informed practices to address the behavior rather than juvenile justice approaches. Addressing behaviors early reduces the likelihood of continued community behavior concerns in the future, as well as more costly out of home placements.

Children of color are disproportionately overrepresented at every stage of the juvenile justice system. The legislation and regulations require an intentional focus on addressing adverse impacts on marginalized communities while continually assessing the communities' strengths and resources that can meet the needs of the eligible children and their families.

4) Costs:

While there may be marginal administrative costs related to the implementation of the differential response and the completion of a new section of the child welfare services plan, the local social services districts are already responsible for assisting families in engaging in services and supports and the completion of the child welfare services plan. It is important to note:

- The total number statewide of intakes for this age group in 2021 was 266.

- Some local districts will realize cost savings where children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act as of December 29, 2022, are no longer eligible to be placed in a juvenile detention facility, a foster care placement or a New York State Office of Children and Family Services facility due to delinquency charges and these are more costly than the alternative differential response.

5) Local Government Mandates:

In accordance with state law, these regulations would adopt mandates for the districts regarding the differential response for children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act as of December 29, 2022, but for whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

6) Paperwork:

The proposed regulations would require districts to document certain information related to the differential response program for eligible children. At a minimum, information regarding the reason(s) the child was referred to the differential response program, documentation of all services offered and accepted by the eligible child and their family, and all evaluations and assessments of that child's progress.

7) Duplication:

The proposed regulations would comply with, but are not duplicative of, other state requirements.

8) Alternatives:

No alternative approaches to implementing the regulation were considered as the requirements are mandated by state law.

9) Federal Standards:

The proposed regulations are not in conflict with current federal standards.

10) Compliance Schedule:

Compliance with the Emergency Adoption and Proposed Rule Making would be effective immediately.

Regulatory Flexibility Analysis

1) Effect of Rule:

The proposed regulations will affect all local social services districts (districts) in New York State. No small businesses will be impacted by this regulation.

2) Compliance Requirements:

Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, provides that the Office of Children and Family Services (the Office) shall promulgate regulations regarding the differential response for children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act, but for whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

Specifically, the proposed regulations would require all districts to establish a differential response program for the eligible children. As part of their district-wide child welfare services plan, the districts must include a plan to implement the program.

3) Professional Services:

These regulations would adopt provisions for the district differential response to include a strength-based assessment to determine whether services are necessary, the plan for supports offered to and accepted by the child and family, and the monitoring of the child's progress in such interventions. It will also provide provisions for training of district and non-district staff regarding the differential response. OCFS is working with local districts on tools to assist them in meeting the requirements of

the regulations, including a referral tracking mechanism and training materials.

4) Compliance Costs: While there may be marginal administrative costs related to the implementation of the differential response and the completion of a new section of the child welfare services plan, the local social services districts are already responsible for assisting families in engaging in services and supports and the completion of the child welfare services plan. It is important to note:

- The total number statewide of intakes for this age group in 2021 was 266.

- Some local districts will realize cost savings where children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act as of December 29, 2022, are no longer eligible to be placed in a juvenile detention facility, a foster care placement or a New York State Office of Children and Family Services facility due to delinquency charges, and these are more costly than the alternative differential response.

5) Economic and Technological Feasibility: No economic or technological barriers have been identified that would prohibit implementation of these regulations as written.

6) Minimizing Adverse Impact: These regulations would adopt state mandated provisions. The requirements under these proposed regulations were necessitated by the Raise the Lower Age of Juvenile Delinquency legislation (Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022) and were therefore unavoidable. The Office of Children and Family Services (the Office) will support local social services districts in the drafting and any necessary revisions of their differential response plans.

7) Small Business and Local Government Participation: The Office has engaged in a process of receiving feedback from local districts regarding the implementation of the Raise the Lower Age of Juvenile Delinquency legislation. This has occurred through the following:

- Forming a small working group of interested local districts to provide direct feedback to the Office on the implementation of the legislation and regulations.
- The Office attending regional meetings of districts to review the legislative requirements and obtain their direct feedback.
- The Office presenting at the New York Public Welfare Association conference in July 2022 to provide an overview of the legislation and obtain feedback from local districts directly.
- The Office will continue to seek opportunities to provide additional learning opportunities for local districts through the issuance of policy and further training.

Rural Area Flexibility Analysis

1) Types and Estimated Numbers of Rural Areas: The proposed regulations will affect the 44 local social services districts that are in rural areas.

2) Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services: These proposed regulations implement requirements derived directly from statutory provisions (Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022).

3) Costs: While there may be marginal administrative costs related to the implementation of the differential response and the completion of a new section of the child welfare services plan, the local social services districts are already responsible for assisting families in engaging in services and supports and the completion of the child welfare services plan. It is important to note:

- The total number statewide of intakes for this age group in 2021 was 266.

- Some local districts, including those with rural areas, will realize cost savings where children under 12 years of age who do not fall under the definition of Juvenile Delinquent under section 301.2 of the Family Court Act as of December 29, 2022, are no longer eligible to be placed in a juvenile detention facility, a foster care placement or a New York State Office of Children and Family Services facility due to delinquency charges, and these are more costly than the alternative differential response.

4) Minimizing Adverse Impact: The requirements under these proposed regulations were necessitated by the Raise the Lower Age of Juvenile Delinquency legislation (Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022) and were therefore unavoidable. The Office of Children and Family Services (the Office) will support local social services districts, including those in rural areas, in the drafting and any necessary revisions of their differential response plans.

5) Rural Area Participation: The Office will actively seek input of local social services districts in rural areas for the implementation of the Raise the Lower Age of Juvenile Delinquency legislation.

Job Impact Statement

The proposed regulatory amendments will not have a substantial adverse impact on jobs or employment opportunities. A full job impact statement has not been prepared for the proposed regulations as it is evident from the

subject matter of the rule that the proposed regulations will not result in the loss of jobs.

NOTICE OF ADOPTION

Differential Response for Children Under 12 Years of Age

I.D. No. CFS-36-22-00002-A

Filing No. 952

Filing Date: 2022-11-18

Effective Date: 2022-12-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 437 to Title 18 NYCRR.

Statutory authority: L. 2021, ch. 810

Subject: Differential Response for Children Under 12 Years of Age.

Purpose: To establish a differential response program for children under 12 years of age.

Text of final rule: NYCRR Part 437

Differential Response for Children Under Twelve (12) Years of Age

Section 437.1 – Legal Authority

This subpart is established pursuant to Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, which provides that the Office of Children and Family Services shall promulgate regulations regarding the differential response for children under 12 years of age who do not fall under the definition of juvenile delinquent under section 301.2 of the Family Court Act, but whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

Section 437.2 Definitions

(a) Child Welfare Services Plan means the district-wide plan, as required under 409-d of the Social Services Law.

(b) Differential Response Program means a program established under these regulations for eligible children under 12 years of age.

(c) Eligible child means a child under 12 years of age, who does not fall under the definition of juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the Family Court Act and whose behavior, but for their age, would bring them within the jurisdiction of the family court pursuant to Article 3 of the Family Court Act.

(d) Family shall include but not be limited to biological relationships; relationships through marriage, partnership, or adoption; caretakers of the child; siblings; adults with a positive relationship to the child or child's family; caretakers of any siblings; or other persons whom the eligible child or their family may consider to be critical supports.

Section 437.3 Program Requirement

All local social services districts (districts) are required to establish a differential response program for the eligible children within the district. Services offered through the differential response program are voluntary to the eligible child and their family. Details of the program and the implementation plan must be reflected in the district child welfare services plan.

Section 437.4 Plan Requirement

Districts must include details of their differential response program for children under 12 years of age in their child welfare services plan. Such information must include, but is not limited to the following:

(a) A description of how the differential responses will enhance the ability of the district to reduce the likelihood of the eligible child's interactions with the juvenile justice and child welfare systems in the future and ensure the safety and well-being of the eligible children. Such description should also include how any family needs and concerns will be supported.

(b) A description of how such differential response addresses adverse impacts on marginalized communities.

(c) A description of the assessments that shall be utilized to determine whether services are necessary and if necessary, the least restrictive interventions that meet the needs of the eligible child and their family. Such tools shall include, but not be limited to, assessment of the eligible child's and their family's strengths, concrete needs, and challenges. Such assessments should consider any individualized vulnerabilities and be responsive to the child and their family's culture.

(d) A description of services and supports to be provided to the eligible child and their family to include but not be limited to preventive services, if eligible, in accordance with Social Services Law Section 409-a and 18 NYCRR Part 423, and family support services programs as defined in 458-m as required or available, and how the services will be offered. Services offered through the differential response are voluntary and must be identified as such in the plan.

(e) A description of the process to be followed for how the district will plan and monitor the services provided under the differential response.

(f) A description of the training to be required for staff engaged in implementation of the differential response. This includes training for district and relevant non-district staff who will be working with eligible children and their families. Such description shall include the training for law enforcement within the district whose main responsibilities are juveniles, pursuant to section 840 of the Executive Law.

(g) A description of any additional funding that shall be made available to enhance the differential response.

Section 437.5 Records, Retention and Confidentiality

Records created under a district’s differential response program shall

(a) include, at a minimum, information regarding the reason(s) the child was referred to the differential response program, documentation of all services offered and accepted by the eligible child and their family, and all evaluations and assessments of that child’s progress; and

(b) be maintained for five (5) years after an eligible child has been referred to the district or until the eligible child reaches the age of 12, whichever is sooner. The district shall destroy differential response program records when they reach the retention benchmark.

Records are confidential and shall not be disclosed except as set forth in section 458-o(3)(c) of the Social Services Law.

Final rule as compared with last published rule: Nonsubstantial changes were made in Part 437-5(b).

Revised rule making(s) were previously published in the State Register on September 7, 2022.

Text of rule and any required statements and analyses may be obtained from: Lisa Vasanani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 474-8310, email: regcomments@ocfs.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis have not been prepared because the proposed changes to the last published rule merely clarify the text and do not change the substance of the proposed rule. Accordingly, no changes to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis are needed.

Revised Job Impact Statement

The proposed regulatory amendments will not have a substantial adverse impact on jobs or employment opportunities. A full job impact statement has not been prepared for the proposed regulations as it is evident from the subject matter of the rule that the proposed regulations will not result in the loss of jobs.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2025, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Pursuant to Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, the Office of Children and Family Services (OCFS) filed Emergency Regulations adding Part 437 to Title 18 NYCRR. OCFS received two public comments, which are grouped below by the relevant regulation sections they address.

Section 437.4

One commenter suggested that an additional subdivision should be added requiring LDSSs to include a description of the referral process for the differential response program.

Response: Thank you for this feedback. OCFS has considered this suggestion and has not made changes to the regulations at this time. OCFS policy includes requirements regarding the need to support families during the referral process, which is contained within the Raising the Lower Age of Juvenile Delinquency Differential Response Practice Guide. OCFS has also reinforced this through training and technical assistance with districts. OCFS will also continue to monitor the field in this area.

Subdivision (b)

One commenter suggested that the regulations should specifically require a description of how the differential response programs address the adverse impact of policing and prosecution of marginalized communities.

Response: Thank you for this feedback. OCFS has considered this suggestion and has not made changes to the regulations at this time. OCFS policy promotes effective equity strategies within the Raising the Lower Age of Juvenile Delinquency Differential Response Annual Plan Desk Aid and the OCFS-2211—Raising the Lower Age of Juvenile Delinquency Differential Response for Children under 12 Years of Age 2022 Annual Plan. The legislation eliminates the possibility of policing and prosecution of eligible children for the differential response and OCFS believes this suggested change would limit districts rather than promote additional effective equity strategies.

Subdivision (c)

One commenter suggested that it should be made explicit that the referral for the differential response assessment is completely voluntary.

Response: Thank you for this feedback. OCFS has considered this suggestion and has not made changes to the regulations at this time. The emergency/proposed regulations explicitly include language related to the voluntary nature of the differential response: Services offered through the differential response program are voluntary to the eligible child and their family. The issued OCFS policy (22-OCFS-ADM-23—Raising the Lower Age of Juvenile Delinquency—A Differential Response for Children Under 12 Years of Age, the Raising the Lower Age of Juvenile Delinquency Differential Response Practice Guide, and the OCFS-2211—Raising the Lower Age of Juvenile Delinquency Differential Response for Children under 12 Years of Age 2022) outlines clearly that the differential response program and any recommended interventions are voluntary to the child and family. OCFS has also reinforced this policy during training and technical assistance sessions with the field.

Subdivision (f)

Two commenters suggested that:

- subdivision (f) be amended to add training for “school district staff” as well as law enforcement pursuant to 840 of the Executive Law, and
- a new subdivision be added that requires a description of how the LDSS shall provide all school districts within the district about the voluntary services for children and families through the differential response and how the services will be offered.

One commenter suggested that OCFS work closely with the New York State Education Department to ensure that all school districts are aware of the voluntary supports available to children and their families under the differential response.

Response: OCFS appreciates the feedback from both commenters, has considered these suggestions and has not made changes to the regulations at this time. OCFS has been working closely with the New York State Education Department to provide a uniform, consistent message to the field for school districts and LDSS differential response programs. New York State Education Department (SED) has issued guidance to school districts as their oversight agency, which is consistent with OCFS policy. OCFS has also reinforced this uniform messaging through training and technical assistance sessions with districts strongly encouraging the LDSSs engage their local school districts in both planning and training. OCFS will continue to collaborate with SED regarding on-going support to the field.

Subdivision (g)

One commenter suggested that this subdivision should include the possibility that LDSSs may seek private funding to support the differential response program and specifically that the term “private” should be added after “local” in this section.

Response: Thank you for your response. OCFS has considered this suggestion and has not made changes to the regulations at this time. Subdivision (g) currently states: A description of any additional funding that shall be made available to enhance the differential response. The broad language currently contained in the regulations is intended to provide flexibility for any additional funding (e.g. private, federal grants or other local government funds) to be used to support the differential response program.

Section 437.5

One commenter suggested subdivision (b) should be amended to explicitly require destruction of any records created under the LDSS differential response program.

Response: Thank you for this feedback. OCFS has considered this suggestion and will be clarifying further the record retention requirements contained within the regulations by explicitly referencing destruction of the differential response records when the legislative and regulatory record retention schedule benchmarks occur.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-22-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.