

The Office of Children and Family Services Response to Public Comments to Emergency/Proposed Rule Making: (CFS-36-22-00002-EP) *Differential Response for Children Under 12 Years of Age*

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 governmental 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.