

The Office of Children and Family Services (OCFS) is required to respond to recommendations made by the Panels in their Annual Report within 6 months after the Panel's recommendations are submitted. The OCFS response must include a description of whether or how the State will incorporate the recommendations of the Panels (where appropriate) to improve local Child Protection Systems. The OCFS response to the Panel's 2004 Annual Report is due no later than August 1, 2005. The remainder of this report addresses recommendations made by New York State's three Citizen Review Panels for 2004. The responses below are grouped by Panel. Attached are the specific recommendations made by each Panel.

### **Western Panel Recommendations for the 2004**

#### **Administrative Reviews and Fair Hearing**

In response to the delays in administrative reviews and fair hearings the Panel recommends: that administrative reviews be conducted within 90 days of a request for such a request and if said request to amend is not granted within 90 days, that a prompt date for a fair hearing be scheduled.

Response:

Currently, OCFS is in substantial compliance with the legal requirements for the completion of administrative reviews and referrals for administrative hearings. Moreover, OCFS is taking all reasonable steps to provide timely reviews and administrative hearings.

The panel recommends that each OCFS region have, at a minimum, one hearing officer assigned to it.

Response:

The Bureau has two full time ALJs covering the Rochester area and two full time ALJs covering the Buffalo area. There is one Supervising Administrative Law Judge (ALJ) and six full time ALJs covering the New York City, Nassau & Suffolk area (two of these six

ALJs are located on Long Island). There is one full time ALJ located in the Westchester/Yonkers area. There is one Supervising ALJ and five full time ALJs covering the Albany and surrounding areas, and one full time ALJ covering Chenango and surrounding counties. There is one Supervising ALJ and two full time ALJs covering the Syracuse and surrounding counties. In addition to the full time staff, OCFS contracts with per diem ALJs around the state to conduct hearings on an as needed basis including six per diem ALJs in NYC; six on Long Island; two in Westchester/Dutchess/Rockland; one in Broome; three in Albany; two in Syracuse; and one in Buffalo.

OCFS has requested 2 additional Hearing Officer positions; one in Kings County and the other in New York County.

### **Notice of Indication Letter by CPS**

The panel recommends that “Notice of Indication” letters be revised to clearly give notice to subjects that the report in which they were named as a subject has been indicated and that this indication could have serious consequences in regard to employment and certification as a child care provider. Letters should have understandable instructions for requesting a review and clearly state that a request can be made beyond 90 days if related to employment or certification as a child care provider. Letters should be available in the subject’s primary language.

Response:

There are certain statutory and regulatory requirements for the notice letter. Section 424(6) of the Social Services Law and the regulations at 18 NYCRR 432.2(b)(3)(ii)(f) require that the district give notice, and the statute and regulations describe briefly what has to be in the notice. In order to be certain that these requirements are properly addressed, any district wanting to use a variation of the standard notice letter recommended by OCFS, should send a copy of the proposed variant letter with an explanation of the reason the district desires to use a variant version, to the OCFS Division of Legal Affairs for review.

### **Educational Requirements for Caseworkers**

In response to issues raised in the Western Panel Consumer Satisfaction Survey, the Panel recommends that the minimum educational requirement for a CPS caseworker be a Bachelor's Degree in Social Work, Psychology, Nursing, Education or other related human services discipline. Administration for Children Services in New York City currently requires a minimum of 24 semester credits for all new applicants for Child Protective Specialists and Child Welfare Specialists positions.

Response:

Small rural districts may not be able to offer the salary and quality of work life that is comparable to what people with the aforementioned degrees might be able to receive in other employment areas. Therefore, districts often rely on the civil service test to provide a pool of applicants, and have difficulty maintaining a list of applicants. We believe that there are other methods available, short of statutory change, that can assist districts to recruit, train and retain qualified staff. Our Children and Family Service Review (CFSR) Performance Improvement Plan (PIP) Strategy #7 addresses the issue of the development and stability of a professional workforce. OCFS is currently working with the Social Work Education Consortium and Civil Service on several strategies to attract Bachelor of Social Work (BSW) students into the workforce and to create opportunities for traineeships and tiered hiring. We would be pleased to meet with the panel to discuss these strategies and seek further input from the panel.

- That all Caseworkers and Supervisors be trained in the State's Core training, which is based on a family centered strength-based model.

Response:

At this time there are no resources to train new staff. In addition, legislation would be needed to mandate this recommendation.

### **Dual Track Demonstration Projects**

In response to the failure of the State Legislature to pass a Dual Track bill in 2004, the Panel recommends that the New York State Legislature passes legislation creating at least

ten Dual Track Demonstration Districts in the state. Nationally a number of alternative response models such as Dual Track have been successfully implemented. Evaluations have shown that these models provide increased services for children and families and lower recidivism rates at funding levels matching that of a traditional investigative response model.

Response:

OCFS is not able to respond to a recommendation for legislative action. However, we have continuing concerns about more than the number of sites in which a demonstration might be held. For example, the availability of resources to support community based services, to evaluate the impact of such a demonstration and to make any infrastructure adjustments to enable the demonstration (e.g., changes in CONNECTIONS) remain imperative to successfully implement such a demonstration. Further, it would be necessary to revise our training programs to accommodate this.

Attached is a copy of testimony presented in writing by Commissioner Johnson, which represents OCFS' position on the Dual Track legislation.

### **Eastern Panel Recommendations for 2004**

#### **Implementation of a Dual Track Demonstration Project**

The Eastern New York State Citizen Review Panel, joining with the other Panels and State organizations, recommends that New York State join a growing number of states in implementing an alternate response to less serious reports made to the State Central Register for Child Abuse and Maltreatment. In pursuit of this goal the Panel recommends: that the State Legislature and the Governor pass and sign into law legislation that would create at least ten demonstration projects permitting an alternative response for less serious CPS reports.

Response:

OCFS is not able to respond to a recommendation for legislative action. However, we have continuing concerns about more than the number of sites in which a demonstration might be held. For example, the availability of resources to support community based services, to evaluate the impact of such a demonstration and to make any infrastructure adjustments to enable the demonstration (e.g., changes in CONNECTIONS) remain imperative to successfully implement such a demonstration.

Attached is a copy of testimony presented in writing by Commissioner Johnson, which represents OCFS' position on establishing differential responses to certain allegations of neglect or maltreatment.

- A revision of the CPS rights letter using strength-based language similar to that currently used by Westchester County as part of their model program.

Response:

There are certain statutory and regulatory requirements for the notice letter. Section 424(6) of the Social Services Law and the regulations at 18 NYCRR 432.2(b)(3)(ii)(f) require that the district give notice, and the statute and regulations describe briefly what has to be in the notice. In order to be certain that these requirements are properly addressed, any district wanting to use a variation of the standard notice letter recommended by OCFS should send a copy of the proposed variant letter with an explanation of the reason the district desires to use a variant version to the OCFS Division of Legal Affairs for review.

### **Support for Primary Prevention Programs**

Resources are needed for primary preventive services that can prevent the need to remove children from their homes. Prevention and early intervention services are vital for the support of children and families in their own homes. Community and in-home visiting services enable parents to gain needed parenting skills and the ability to solve family problems in the home setting. With cuts to their budgets and the elimination of TANF monies, many preventive programs have lost their previous levels of funding, placing children and families at risk. In response the panel recommends: that New York State

restores adequate funding to maintain and expand the current number of Healthy Family sites across the state. Despite the well-documented successes of the Healthy Families program, funding has been reduced from the prior funding level of \$17.6 million.

Response:

The 2005/06 New York State Budget provided funds to continue the Healthy Families programs at their current levels. Additionally, the 2005/06 Budget provided \$15 million in TANF funding for the development of new community-based preventive programs. A request for Proposals (RFP) was released on July 21, 2005 to develop these prevention programs.

- That a dedicated funding source be found to support and expand the programs sponsored by the NYS Children and Family Trust Fund.

Response:

OCFS remains committed to program development, especially for preventive services. Attached is a copy of the agency's *Children and Family Services Continuum*, which reflects the central role of the community in service delivery. Commissioner Johnson continues to articulate the importance of investment in services to support children in the context of their families and families in the context of their communities. OCFS has been fortunate to receive substantial appropriations for program development to expand existing, efficacious practices and programs and to test innovative practices.

The 2002 enactment of the Child Welfare Finance Law created a vehicle for local social services districts to assume ongoing maintenance of programs that succeed in demonstrating success in achieving positive outcomes for children and families. The "Uncapped Services Reimbursement" facilitates the ability of local districts to share in the operating costs of programs independent of TANF and other federal funding. The uncapped reimbursement provides 65 percent state reimbursement, net of federal funding, for a full range of child welfare services, including preventive, protective, adoption and independent living services. The Healthy Families program, Child Advocacy Centers

and Multidisciplinary Teams, and many of the programs funded by the NYS Children and Family Trust Fund are eligible for funding through uncapped services reimbursement.

### **Child Advocacy Centers**

The Panel recommends that state funding for Child Advocacy Centers and Multidisciplinary Teams be continued and be expanded. These programs offer a comprehensive approach in providing services to abuse victims and their families.

Response:

The Executive Budget has provided consistent support for this approach to the investigation, case management and prosecution of cases involving child abuse. The 2005/06 State Budget included \$1,807,800 in support of this recommendation. OCFS will issue a Request for Proposals (RFP) during September of 2005. This RFP will also provide funding for Child Fatality Review Teams and a Child Advocacy Resource and Consultation Center (CARCC) to provide team building assessment and support services, including, but not limited to technical assistance, local, regional and state wide training, a website with listserv capacity and coordination of data gathering.

### **NYC Panel Recommendations for 2004**

The New York City panel is resubmitting its 2003 recommendations, “based on the fact that they were not fully addressed in the OCFS response. The agency responses were either vague or did not address the recommendation”.

### **Emergency Removals of Children by ACS**

The New York State Citizen Review Panel for Child Protective Services in New York City continues to be concerned about the number of children that ACS is removing without

court order. The Panel believed that for many reasons it was preferable for ACS to seek an order whenever possible. Judicial review allows for a neutral magistrate to review the application and, when possible, give the parents a chance to present an explanation. Alternative arrangements could also be worked out in the court. This concern was reinforced by the decision of the New York Court of Appeals in *Nicholson v. Scoppetta* in November, 2004, emphasizing the need for court determinations before removals. The Family Court has clarified that it will accept applications for removal at any time the court is open. ACS Commissioner John Mattingly has agreed that the Family Court is the place for removal decisions to be made whenever possible.

The Panel recommends that ACS provide regular reporting to the Panel and the state of the number of children placed and that the report clearly reflect the number of placements made with and without benefit of a court order, and the circumstances of the removal. The Panel also recommends that ACS issue clear guidelines to its staff regarding removal decisions and process.

Response:

ACS continues to provide training, especially of managers, around removal practice so that frontline staff is always reminded of the preference to seek a court order prior to removal. There is an emphasis with Child Protective staff on the importance of consulting with an attorney unless the risk is so imminent as to preclude a consultation. Only experienced ACS attorneys conduct these consultations. There is now an attorney on call 24 hours per day for consultation purposes. ACS has continued conversations with the NYC Family Court in an effort to maintain and improve an open line of communication to call and make FCA 1022 applications outside of traditional court hours. The court is considering the practical implications of ACS's request and plans to follow up with them. Moreover, ACS is now attending regularly scheduled NYC Citizen Review Panel meetings to address this issue.

**Children Left Home Alone**

One of the pressing problems in child welfare today is the number of children who are left home alone. There is a need for clearer standards to guide parents. As a result of the lack of such clearer standards, children suffer in two ways. First, because parents are often confused or lack expert guidance on when children can be safely left alone, some children are left alone at too young an age and their safety is imperiled. Second, because parents are not on sufficient notice of standards or guidance, Caseworkers substitute their own judgment and remove children when they disagree with a parent's decision. The children then are subject to the trauma of separation from their families. Therefore, the Citizen Review Panel believes that there is an urgent need to develop such standards and publicize them, and will make the development of such standards a priority.

Response:

Our policy and most local practice, including ACS', is that the OCFS safety assessment protocol is applied to determine whether a child is in immediate danger of serious harm, if anything is mitigating against that and what can be done short of removal in order to establish safety. As we stated in last year's response to this concern "OCFS believes individual children's differences preclude establishing such a standard. Instead of issuing a unilateral policy that fails to recognize widely varying rates of achieving social, emotional and cognitive maturity (and which may mislead parents), OCFS has made child and youth development a part of its core training curriculum for caseworker staff involved in assessing the capability of children to stay home alone."

### **Program Reviews**

The following programs should receive an ongoing review, by the State and City agencies responsible for CPS service, with the idea of making the services of these programs better known and involved in a case planning level for the delivery of services designed to preserve families and protect children. Included in this review should be the adequacy of funding and the potential for procedural connecting linkages among these now marginal programs and means for evaluating measurable outcomes.

1) Healthy Families

*State should provide permanent funding for the William B. Hoyt Children and Family Trust Fund, a major source of start up money for new preventive programs such as Healthy Families.*

2) Child Advocacy Centers (CAC)

3) Consumer Advocacy Programs (e.g., parents, youth, etc.)

4) Parent advocacy, representation and consumer information and guidance centers.

In addition the Panel recommends adequate funding to support the expansion of the Safe Babies initiative. That the State and City launch an educational campaign that would support adequate distribution of the informational packets and video at a local community level.

Response:

OCFS endorses better dissemination of outcomes achieved by programs and relating future funding to this track record. In fact, *A Technical Assistance Manual on Developing Outcomes for Planning* was prepared by Pamela S. Imm for OCFS' Integrated County Planning Project. This manual has been adopted by the RAND Corporation for its website to help government agencies and providers to better assess their funding decisions and to hold projects accountable.

As noted before, uncapped services reimbursement is a vehicle available to counties for funding programs that meet local needs. The Panel should continue working closely with New York City, including the Administration for Children's Services, in considering the most efficient and effective means of allocating resources.

**Mandatory and Anonymous Reporting**

The Panel continues its concern about the current system of mandated reporting to the NYS Central Register and again calls upon the Office of Children and Family Services to

conduct research on the effectiveness and impact on the system. The Panel recognizes the need to balance the discovery and investigation of cases of child maltreatment with that of the impact on families and children from the intrusiveness of such investigations. The Panel is especially concerned with the acceptance of anonymous reports by the SCR and the reliability of such reports. It is a serious failing of the child protective system that 30 years after the establishment of the Child Protective Act, there is little evidence to help us understand the value or harm caused by these elements of the child protective structure (i.e., anonymous and mandated reporting).

The Panel inquires whether an investigation prompted by anonymous reporting to law enforcement could be sufficiently investigated. There should be an ongoing evaluation of the mandated reporting education process, including the refinement of the child abuse training videos and the distribution of these videos to a larger mandated reporting population. We are particularly interested in the variations amongst the mandated reporting groups as to their reporting reliability.

Response:

Staff of OCFS periodically examine the question of whether anonymous reporting to the State Central Register (SCR) is a statutory provision worthy of support to better protect the children of New York State. While understanding that an SCR report with little or any merit can be disruptive and hurtful to a family, we continue to conclude that anonymous reports should still be accepted and trigger a CPS response. Anonymous reports account for 16% of all reports. The indication rate for reports received from anonymous sources is 15%, as compared to 33% for all reports.

A requirement that the reporter provide his or her identity would not deter all reporters who currently report anonymously from making a report, however, some portion of anonymous reports would be lost. Whether anonymous reports come from family members who are reluctant to further strain family relationships, estranged parents with a

variety of motives, or an acquaintance with personal legal difficulties, the report made may prove important to maintaining children's safety. Continuing to accept reports without the identity is important to the children who are victims of abuse and maltreatment.

Deciding whether to report suspected child abuse can be a difficult and confusing process, however it is a central first step toward protecting a child who might be in danger. Some states require that every citizen who suspects a child is being abused or neglected to report it. Child Protective Specialists who respond to calls made to the NYS Central Register for Child Abuse and Maltreatment (SCR) generally try to discourage anonymity for many reasons. Not knowing the identity of the reporter does not allow the child protective worker the opportunity to get more information during the investigative process or to call the reporter as an evidentiary witness if the case goes to trial.

Given the overall purpose of child protective laws nationally and in New York State, and trying to balance the need for protecting specific children from abuse and neglect, while not unduly causing family intrusion, we remain convinced that continuing to accept anonymous reports, on balance, continues to be necessary.

### **Overrepresentation of Minorities**

The Panel continues to be concerned with the overrepresentation of minority families in the child protective system and recommends the evaluation of data pertaining to such reports. The Panel supports the Administration for Children's Services' initiative to better understand the systemic causes of overrepresentation of minority families by examining the infrastructure of these communities as well as the various procedural and decision-making biases that may exist in the child protective process.

Response:

OCFS is also concerned with over-representation of minority families and has established a workgroup to address issues related to disproportionate minority representation in the child welfare and juvenile justice systems. ACS' findings in looking at infrastructures of

communities that create systemic causes of overrepresentation of minority families would be of value to OCFS. The work of ACS and other concerned individuals and organizations will prove instructive to the OCFS workgroup.

### **Permanency, Life-Long Family Connections for Adolescent's in Foster Care**

The Panel will explore collaborative strategies supportive of public and private efforts to facilitate permanent life-long family connections for adolescents in foster care and those aging out of care. The recommendation recognizes ACS' recently launched concurrent planning strategies aimed at significantly reducing the number of youth with the permanency goal of independent living by, among other things, requiring diligent efforts by Caseworkers to assist youth in care in identifying, contacting and maintaining connections with relatives and other "significant adults" throughout the youths' placement in care; connections the youth will be better able to maintain upon discharge. The Panel strongly recommends that all of the ASFA permanency options: reunification, placement with relatives, kinship foster care, guardianship and adoption, be aggressively explored and periodically revisited on behalf of older adolescents in care.

The Panel supports the passage of child permanency legislation and recommends that OCFS join the Panel to ensure passage of those parts of the legislation where there is a consensus and that the state facilitates a resolution for those parts of the legislation where there is a lack of consensus.

#### **Response:**

OCFS appreciates the Panel's support for the direction it has undertaken with its *Adolescent Strategies* report and subsequent activities. We especially look forward to similar support for comprehensive revisions to regulations related to adolescents in foster care, which we plan to publish for comment this year. OCFS also appreciates the broadly-based support engendered for the Permanency Bill (Senate Bill #S.5805). We are happy to report that the legislation was strongly supported by OCFS and successfully passed both houses during this term.

### **Dual Track Demonstration Projects**

The Panel supports the passage of legislation that would create a Dual Track demonstration program in several districts within the state. In pursuit of this recommendation, the Panel further recommends that a meeting of representatives from the Governor's Office, State Legislative Leaders, OCFS and Panel members be convened to review the issues and legislative language that has impeded passage of this legislation.

#### Response:

The universal interest of the Panels in Dual Track reflects a general commitment to improve services and supports to families involved with allegations of neglect with enriched services through community service providers with an ultimate goal of strengthening families. Perhaps the discussion would benefit from looking more generally at alternative strategies for achieving the same outcome. OCFS recommends that local social service districts be added as key participants. Two counties, Westchester and Chautauqua, have provided leadership in refining of child protective services within the provisions of current statute. Moreover, please see Commissioner Johnson's testimony for the 6-10-05 roundtable discussion.