NYPWA 2025 Summer Conference

Meeting with OTDA and OCFS Counsel

July 23, 2025

(Revised 7-9-2025)

OTDA

Question: Can you provide a current chart of your Counsel's Office staffing, with contact information (names, titles, email address) broken down by responsibility?

Answer:

Question: What are the recent significant litigation cases OTDA are involved with that may impact local social services districts?

Answer:

Question: What is the status of the OTDA regulatory agenda for 2025?

Answer:

Question: Can you provide a summary of any regulatory changes made so far during 2025?

Answer:

Question: SSL 141- Can the LDSS recoup burial costs from life insurance or deny application for TA burial if there was a life insurance policy?

Answer:

Question: If a child is placed in OCFS custody does the LDSS child support unit have an obligation to pursue the parents for support? If we do, how do we do so? Can we be named the assignor because we have a court order of disposition relative to the child even if they are not in foster care?

Answer:

Question: To the extent that your hearing office has the authority to opine on this, versus DOH's authority…

Any chance that OAH would tighten up authorizations enabling nursing homes or their counsel to represent Applicant/Recipients at fair hearings? I think there should be a waiver or acknowledgment of conflict of interest or an affirmative statement from counsel that they would not represent the nursing home in any enforcement action against the Applicant/Recipient.

Answer:

Question (added 7/9/25): We have a new-ish child support magistrate who is indicating that she will be requiring that our Article 4 petitions be filed naming the Support Collection Unit as petitioner rather than Department of Social Services, which has been our county practice. OCA forms 4-3a and 4-12 both are captioned Department of Social Services. I note that FCA 422(a) includes a "social services official may originate a proceeding under this article if so authorized by section one hundred and two of the social services law," and that SSL 102 authorizes a "public welfare official… responsible for the administration of public assistance and care…" to bring child support proceedings, which would seem to indicate that the LDSS Commissioner is the appropriate party versus the SCU. The SCU is a unit within DSS, and DSS counsel appears on inquests and hearing. What is OTDA's position on this requested change?

Answer:

Question: Are there any CLE programs that your office would be willing to present at the 2026 Winter conference?

Answer:

Joint

Question: Local District Policies and 18 NYCRR 300.6

18 NYCRR 300.6

Rules, regulations and procedures by social services officials shall be filed with the department at least 30 days prior to the proposed effective date and shall not become operative until approval by the commissioner or until the 30th day after filing if not disapproved by the commissioner as being inconsistent with law or department regulation.

(a) The provisions of this section apply to all rules, regulations and procedures relating to programs of assistance and care mandated on social services districts by Federal requirements or the Social Services Law, except those required to be submitted for department approval under other provisions of law or State regulation, and those concerned strictly with internal management of the district.

(b) The filing shall be dated from the day of receipt by the office of the rule, regulation or procedure and the 30th day after such filing shall be determined beginning with the day after the filing.

(c) The local commissioner of social services shall submit in duplicate to the State Department of Social Services for approval the proposed local rule, regulation or procedure accompanied by the prescribed form. Where necessary to substantiate the proposed rule, regulation or procedure, documentation shall be included. This submittal shall be by certified mail, return receipt requested.

(d) Within the 30-day period, the State commissioner shall return to the local department one copy of the form, showing approval, or disapproval with reasons, of the proposed rule, regulation or procedure.

(e) The provisions of this section shall not apply to rules, regulations and procedures mandated or recommended by the department.

Our office has question(s) on when must an LDSS submit its internal policies for State agency approval. Broadly speaking, and what we would like clarity on from the State agencies, is when exactly is 18 NYCRR 300.6(a) triggered, and conversely, when exactly does 18 NYCRR § 300.6(e) apply?

Answer:

Question:

Our understanding is that different Counties have very different methods for providing legal services. We are looking for practical, implementable guidelines for providing legal services. Can you offer any advice on the following:

1. How should the provision of legal services be implemented?

2. What resources are available, beyond OTDA's 10-ADM-02 (Legal Services and Cost Recovery for Recipients of Child Support Services), for developing a compliant plan to provide legal services?

3. Are there model rules or similar process guides for implementing legal services?

4. What does the provision of legal services look like in the court room? Our understanding is that some counties do not appear to provide legal services at all, limiting their involvement to out-of-court advice and assistance, while others offer legal services that look much more like an attorney/client relationship.

Answer:

OCFS

Question: Can you provide a current chart of your Counsel's Office staffing, with contact information (names, titles, email address) broken down by responsibility?

Answer:

Question: What are the recent significant litigation cases OCFS are involved with that may impact local social services districts?

Answer:

Question: What is the status of the OCFS regulatory agenda for 2025?

Answer:

Question: Can you provide a summary of any regulatory changes made so far during 2025?

Answer:

Question: **Note- we had an answer in late June that the IV-E plan amendment had not been approved yet- any update?**

Social Services Law 453 was amended earlier this year, with the contingency that it takes effect 90 days after the US Dept. of Health and Human Services approves a title IV-E plan amendment regarding the law. Under the amendment, an LDSS can stop adoption subsidy payments to an adoptive parent if the kid(s) are no longer in said adoptive parent's care, and the adoptive parent is not providing for the well-being of the children. Potentially such payments could then go to the party who is actually caring for the children.

1- Has the IV-E plan amendment been approved, and if it has, on what date will the amendments to SSL 453 take effect?

A particular situation. An adoptive parent of 3 girls is still receiving subsidy payments around $5,000 monthly. The kids are in the Art. 6 care and custody of another couple. The adoptive parent pays (for the most part) about $1,500 to $2,000 per month to the Article 6 custodial party. They say the payments are not enough for the counseling, insurance costs, and needs of the children and want JCDSS to stop the

subsidy payments to the adoptive parent and give them the money. They claim the new bill allows for this.

First, as I read it we would have to make a determination that the money the adoptive parent pays the Art. 6 party does not support the kids. If we do make that determination, we can stop payment to the adoptive parent.

1. if the adoptive parent is paying 1,500 or more monthly, can the LDSS even say she's not supporting the kids and even stop her payment?

2. if the statutory amendment is now in effect, and we do stop payments to adoptive parent, and pay Art. 6 party, is that a local DSS cost or is it IV-E reimbursable?

Answer:

Question: A motion was made in one of our Neglect cases requesting that another county be substituted in place of our county to handle a case that was heading to adoption by the prospective adoptive foster parents in response to our decision to remove the children from their care. Is there a mechanism for that? The motion does not cite any statutory authority or any caselaw.

There is some guidance on the conflict of interest issue in the OCFS CPS Manual:

New York State Child Protective Services Manual Chapter 4—Section E—Page | E-1

Sensitive and high-profile investigations

b. When a person named in a report is known to a CPS employee

When the subject(s) or other person named in a child abuse or maltreatment report is already personally known to a CPS worker from outside the scope of the job, it is advisable to mark the case "sensitive" and assign it to a worker who does not know the subject(s) or other
person named in the report to conduct the investigation or FAR. Because this situation typically would involve only one CPS worker, there is no need to involve an outside LDSS.

c. Responsibilities after a sensitive case is indicated

After the neighboring CPS, has indicated the case and developed a service plan, the case may be transferred to the district in which the subject(s) resides. If the neighboring LDSS finds that it is necessary to initiate a court proceeding, the actions based upon

those findings must be undertaken by the "home" LDSS in its own jurisdiction [FCA §1015].

If a subject of the report requests an administrative review and a fair hearing under either SSL §422(8) or SSL §424-a, the neighboring LDSS that made the original determination will be required to present the case record and to appear at the hearing as part of the normal appeals process. The hearing may be scheduled in the subject's home district.

Answer:

Question: Similar to the previous question, what if, instead of being a neglect case, it's a case where a child was removed from a foster home?

We issued 10-day letter that we were going to remove the children from their care pursuant to NYCRR 443.5 regarding Removal of foster children from the foster home. The pre-adoptive foster parents have moved through counsel for the whole matter to be transferred to another county to handle the matter claiming that my agency has a conflict of interest and has acted arbitrarily and capriciously with respect to seeking to remove the children. The children had been surrendered to the Department's custody approximately 8 months ago by both biological parents through conditional surrenders. The motion claims that the Department's judgement "has been tainted" and our change in position from supporting adoption to not is unsupported by the facts of the case. And the motion also cites "imminent risk of harm" through removal. No statutory authority or caselaw is cited in the motion.

Additionally, prior to issuing the 10-day letters, we also issued a letter a few days prior stating that we decline to sign off on adoption agreement to finalize the paperwork. It was the misconduct of the foster parents that led to my Department making that decision. Pursuant to 18 NYCRR 443.5, conference was held with foster parents giving them opportunity to argue why we should not remove. Subsequently, Department decided to stand by initial decision to remove and notified counsel and Court. Court, in response to Department's determination, has ordered that we not remove pending a "best interests" hearing. Department's argument is that administrative process has to

play out - OCFS Fair Hearing and, depending on how that goes, Article 78 potentially. Court seems keen on conducting what it is terming a "parallel" proceeding.

The OCFS New York State Foster Parent Manual starting at page, 57, but most relevantly, at page 58 seems to be talking about this scenario, and that 18 NYCRR 443.5 is the controlling authority on what the procedure is. If these foster parents are objecting to that, it seems to me that they would have to challenge the regulation, which would include suing OCFS, and thus involve the NYS Attorney General? It seems to me that by agreeing to become foster parents, the foster parents would have to have agreed to follow the OCFS regulations?

Answer:

Question: When is the care/custody language used in a 1017 placement with a relative resource versus foster care? If the placement is a 1017 they are in the resource's "care" and the LDSS's "custody"? Why?

Answer:

Question: If a 1017 placement goes to home on trial what happens to the custodial interest of the 1017 resource (if any)?

Answer:

Question: LDSS's have authority under 18 NYCRR 405.1- 405.4 to purchase services for eligible individuals, including foster care maintenance services, which may be purchased only from authorized agencies as defined in section 371(10) of the Social Services Law. Do all approved QRTP's fall within the definition of "authorized agency" and thus may be contracted with by an LDSS?

Answer:

Question: Release of preventive services records. 18 NYCRR 423.7(b) permits release to:

(1) the New York State Department of Social Services;

(2) the social services district;

(3) a preventive service agency, as defined in section 423.2(a) of this Part, or an authorized agency, as defined in subdivision (a) of section 371.10 of the Social Services Law, providing services to the child or other family members;

(4) any person or entity upon an order of a court of competent jurisdiction; or

(5) any other person or entity providing or agreeing to provide services to the child or the child's family upon the execution of a written consent by the child or the child's parent in accordance with subdivision (e) of this section.

Does the written consent exception limit the service providers to other preventive services providers, or does it include such “services” as an attorney representing some or all of the family?

Does a discovery demand in an Article 10 or other Family Court case where the LDSS is a party obviate the need for a release as described in the regulation?

Answer:

Question: In a situation where an individual needs a guardian, partly because there is a pending lawsuit settlement that he will not agree to but also due to competency issues/conditions of the home etc., can another county act as a special prosecutor to be the petitioner/guardian for us when we are a beneficiary to that settlement and therefore should not be deciding what happens with the property?

Answer:

Question: Are there any CLE programs that your office would be willing to present at the 2026 Winter conference?

Answer:

Question: (added 7/9/2025): Can a non-respondent, non-custodial parent file for a 1028 hearing to avoid being placed under court/DSS supervision, versus filing a custody petition or being considered as an FCA 1017 resource?

In this case, there was a removal from the custodial parent, and the non-respondent father has appeared, requesting a 1028 hearing and asking for conditions and no supervision of him by DSS. His attorney is citing the Matter of D.L. v S.B. (39 NY3d 81 (2022)) case, saying that the not-withstanding that it is an ICPC case, that it stands for the proposition that a non-respondent parent can utilize any means in the FCA to obtain a placement when there is an Article 10 removal from the other parent.

However, the Court of Appeals, in deciding the DL case, wrote that:

> Although the ICPC does not apply to placement with a parent, the Family Court Act contains other effective means to ensure the safety of a child before awarding custody to an out-of-state parent. Family Court retains jurisdiction over custody proceedings and has a broad array of powers under the Family Court Act to ensure a child's safety. Among other things, Family Court can hold hearings and request courtesy investigations and reports [*5]from the local social service agencies or department of probation in order to make determinations regarding a child's best interests. Additionally, rather than awarding an out-of-state parent full custody, Family Court Act § 1052 (a) provides for other dispositional options, including release to a parent with supervision. Similarly, Family Court may grant a temporary order of custody or guardianship to a noncustodial parent (see Family Court Act § 1017 [2] [a] [i]; see also § 1055), which requires that a parent submit to Family Court's continuing jurisdiction and comply with the terms and conditions of the court's order—which may include making the child available for visits with social services officials (see Family Ct Act § 1017 [3]). In such instances, the case remains on the court's calendar and the court maintains jurisdiction over the case until the child is discharged from placement and all orders regarding supervision, protection or services have expired (see Family Ct Act § 1088).

The LDSS has offered to consent to a placement under 1017, with supervision, and requiring the father to obtain a substance abuse evaluation, as he has admitted some drinking issues. The father's attorney has refused that, perhaps wanting to use the recent Matter of Sapphire W. (237 AD3d 41 (2nd Dept., 2025)) case to not have the conditions and supervision imposed on the father. While it would be hoped that Sapphire is limited to its facts- there the non-respondent parent was also the custodial parent, there is concern that the Sapphire case is being stretched far beyond its bounds in this and other cases.

The core questions are:

Can a non-custodial, non-respondent parent who had no access to the child during the time of removal file a 1028?

If no, what is their appropriate relief?

If yes, what happens to the custodial/respondent parent's rights to a 1028?

Answer: