



David A. Paterson  
Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
52 WASHINGTON STREET  
RENSSELAER, NY 12144

Gladys Carrión, Esq.  
Commissioner

### Informational Letter

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<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	March 5, 2009
<b>Subject:</b>	<b>Institutional Abuse Provisions: Chapter 323 of the Laws of 2008</b>
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<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:  Buffalo Regional Office- Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> Rochester Regional Office- Linda Kurtz (585) 238-8200 <a href="mailto:Linda.Kurtz@ocfs.state.ny.us">Linda.Kurtz@ocfs.state.ny.us</a> Syracuse Regional Office- Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> Albany Regional Office- Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> Spring Valley Regional Office- Patricia Sheehy (845) 708-2499 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> New York City Regional Office- Patricia Beresford (212) 383-1788 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services- Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a>
<b>Attachments:</b>	IAB Regulations (issued on an emergency basis, effective 01/17/09)
<b>Attachment Available Online:</b>	<a href="http://www.ocfs.state.ny.us/main/legal/Regulatory/er/">http://www.ocfs.state.ny.us/main/legal/Regulatory/er/</a>

**Filing References:**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			NYS SSL 412,412a, 433		

**I. Purpose**

The purpose of this Informational Letter (INF) is to advise local departments of social services (LDSS) and voluntary authorized agencies (VA) of the provisions contained in Chapter 323 of the Laws of 2008 and the amended Part 433 regulations that reflect the new institutional abuse (IAB) provisions. Most prominent in Chapter 323 and the new regulations, which were filed on an emergency basis on January 16, 2009, are new definitions of an abused or neglected child in residential care. This INF highlights some of the statutory and regulatory changes, including the new definitions, time frames and protocols regarding submission of reports to the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) involving children receiving care in residential facilities.

**II. Background**

The 1985 New York State Child Protective Services (CPS) legislation required the former NYS Department of Social Services, now the Office of Children and Family Services (OCFS), and the NYS Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) to investigate reports of institutional abuse and neglect, depending upon the oversight agency and program. Further statutory amendments in 1992 made the IAB legislation a permanent part of the Social Services Law (SSL) and established the definitions of institutional abuse and neglect as they existed prior to the effective date of Chapter 323 of the Laws of 2008.

**III. Program Implications****A. Definitions**

The definitions of abuse and neglect pertaining to children in residential care were moved from SSL §412 to the new SSL §412-a, and revised substantially. The new definitions follow.

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**, 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**, is the victim of sexual abuse (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.*

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 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.

**“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.

**“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.

**“Residential care”** now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth. This adds OASAS residential facilities serving youth to the jurisdiction of IAB. IAB investigations at OASAS facilities will be the responsibility of 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.

**B. Indicating Reports**

To determine if a report can be indicated for abuse or neglect of a child in residential care, 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 in A. above that are 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 and 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.

**C. Determinations in IAB Cases**

Within 60 days of receiving a report of abuse or neglect of a child in residential care, OCFS (or CQCAPD for those IAB reports investigated by CQCAPD) must make the following determinations:

- a) whether the report is indicated or unfounded;
- b) whether there a basis for a familial report to the SCR. If so, OCFS must make a separate report to the SCR, unless such a report has already been made;
- c) whether it appears likely that a crime may have been committed against the child. If so, OCFS 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. If so, the IAB investigator must provide that information to the director of the residential facility and the appropriate operating or licensing agency (or, within OCFS, the appropriate OCFS staff) at that time.

#### **D. Procedures**

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 must:**

- a) report its findings to the director of the facility and to the appropriate licensing or operating state agency or, within OCFS, to the appropriate OCFS 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 IAB report.

#### **And, the Facility and Licensing State Agency must:**

- c) initiate any necessary and appropriate corrective action within a reasonably prompt period of time; and
- d) within a reasonably prompt period of time, the facility must submit to the appropriate licensing state agency and OCFS, and the licensing state agency must submit to OCFS (and send a copy to the facility of) a written report of the actions taken to address OCFS' findings and such subsequent progress reports as OCFS may require, including any actions to implement a plan of prevention and remediation.

#### **E. Other**

School-age child care programs: The definition of "subject of the report" in SSL §412 is clarified to specifically include a director or operator of, or employee or volunteer in, a school-age child care program who allegedly caused or allowed injury, abuse or maltreatment of a child. Workers in school-age child care programs are also specifically included in the list of mandated reporters of suspected child abuse and maltreatment in SSL § 413. This was implied in statute and was explicit in the OCFS regulations prior to Chapter 323 but is now specified in statute as well.

CQCAPD: Analogous changes were made to the Mental Hygiene Law to provide CQCAPD with the same sorts of responsibilities in regard to those IAB reports investigated by CQCAPD as are required of OCFS under the SSL.

Hearings: Technical changes were made to Section 422 and 424-a of the SSL to specify that the standard of evidence at administrative hearings held to contest a determination to indicate a report of child abuse or maltreatment (whether made by a social services district or in an IAB case) is a preponderance of the evidence. This change in practice was made some time ago in response to decisions in both federal and New York state courts, and Chapter 323 amended the relevant statutes to reflect the requirements of the court decisions.

#### **IV. Effective Date**

The provisions of the new law that change the IAB definitions and procedures became effective 180 days after enactment, on January 17, 2009.

*Please note also that, for purposes of transition between the current law and the new law, the effective date will apply to the date of actions that may (or may not) constitute IAB. For a report registered on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the former definitions of abuse and neglect of children in residential care will apply. The new definitions of abuse and neglect of children in residential care will apply only to incidents that occur on or after January 17, 2009.*

*/s/ Nancy W. Martinez*

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**Issued By:**

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

Section 433.1 of Title 18 is amended to read as follows:

This Part requires the [department] Office of Children and Family Services to investigate allegations of child abuse and neglect occurring in residential care facilities operated by authorized agencies. This requirement was first imposed upon the [department] office by chapter 676 of the Laws of 1985, the Child Abuse Prevention Act of 1985, which established a comprehensive mechanism for appropriate investigation of [ensuring that] reports of child abuse and neglect involving children receiving care in residential child care [were appropriately investigated] and was [has been] made permanent by chapter 32 of the Laws of 1992. Chapter 323 of the Laws of 2008 clarified the definitions of abuse and neglect of a child in residential care and strengthened the process used to investigate and respond to such allegations. In addition, this Part sets forth the actions residential child care facilities must take when such facilities are notified that there is an allegation of child abuse or neglect in the facility and that such report, after an investigation conducted by the [department] office, is determined to be indicated or unfounded where the office has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services.

Section 433.2 of Title 18 is repealed, and a new section 433.2 is adopted to read as follows:

(a) “Abused child in residential care” means a child in residential care who:  
(1) is subjected to any of the following acts, regardless of whether the child is injured, when such act is not accidental and is not an emergency physical intervention necessary to protect the safety of any person:

(i) being thrown, shoved, kicked, burned, stricken, choked, smothered, pinched, punched, shaken, cut or bitten;

(ii) the display in a threatening manner of a weapon or other object that could reasonably be perceived by the child as a means to cause pain or injury;

(iii) the use of corporal punishment;

(iv) the withholding of nutrition or hydration as punishment; or

(v) the unlawful administration of any controlled substance or alcoholic beverage; or

(2) is inflicted, by other than accidental means, with a reasonably foreseeable injury that causes death or creates a substantial risk of:

(i) death;

(ii) serious or protracted disfigurement;

(iii) serious or protracted impairment of the child's physical, mental or emotional condition; or

(iv) serious or protracted loss or impairment of the function of any organ; or

(3) is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause:

(i) death;

(ii) serious or protracted disfigurement;

(iii) serious or protracted impairment of the child's physical, mental or emotional condition; or

(iv) serious or protracted loss or impairment of the function of any organ; or

(4) is the victim of any offense described in article 130 of the Penal Law or section 255.25, 255.26 or 255.27 of the Penal Law; or is allowed, permitted or encouraged to engage in any act described in article 230 of the Penal Law; or is allowed or used to

engage in acts or conduct described in article 263 of the Penal Law; provided, however, that:

(i) the corroboration requirements of the Penal Law will not apply to this definition; and

(ii) the age requirements of articles 130, 230 and 263 of the Penal Law and any age based element of any crime described therein will not apply to this definition.

(b) “Neglected child in residential care” means a child in residential care who:

(1) experiences an impairment of his or her physical, mental or emotional condition, or is subjected to a substantial risk of such impairment, because he or she has not received:

(i) adequate food, clothing, shelter, medical, dental, optometric or surgical care consistent with the applicable rules and regulations, provided that the facility has reasonable access to the provision of such services and that necessary consents for any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals;

(ii) access to educational instruction in accordance with the compulsory education provisions in part 1 of article 65 of the Education Law; or

(iii) proper supervision or guardianship, consistent with the applicable rules and regulations; or

(2) 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

(3) 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 pursuant to this Part, the Mental Hygiene Law, the Executive Law or the Education Law; or

(4) 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.

(c) “Child” means a person who is under the age of 18 years of age; or a child with a disability, as defined in section 4401(1) of the Education Law, who is 18 years of age or older and who is in residential care in a school or facility described in section 432.12(b)(3)(iii)-(vi) of this Title. Such term includes a child with a disability in residential care in such a school or facility who is 21 years of age, and is entitled pursuant to section 4402(5) of the Education Law to remain in the school until either the termination of the school year or the termination of the summer program, as applicable.

(d) “Custodian” means a director, operator, employee or volunteer of a residential child care facility or program; or a consultant or any person who is an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a residential care facility pursuant to a contract or other arrangement that permits such person to have regular and substantial contact with children in residential care.

(e) “Indicated report” means a child abuse or maltreatment report where an investigation reveals some credible evidence that a child in residential care has been abused or neglected, as defined in subdivisions (a) and (b) of this section, and a specific custodian is identified as being responsible, in whole or in part, for such abuse or neglect of the child by:

(1) committing, promoting or knowingly permitting any of the acts identified in paragraph (4) of subdivision (a) of this section;

(2) committing any of the acts identified in paragraph (1) of subdivision (a) of this section;

(3) committing any of the acts identified in paragraph (4) of subdivision (b) of this section; or

(4) causing the physical, mental or emotional injury or impairment of a child or the substantial risk of such injury or impairment by:

(i) direct action;

(ii) conduct and with knowledge or deliberate indifference allowing any such injury, impairment or risk;

(iii) failing to exercise a minimum degree of care;

(iv) failing to comply with an applicable 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; or

(v) 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 pursuant to this Part, the Mental Hygiene Law, the Executive Law, or the Education Law.

(f) "Mental or emotional injury or impairment" and "impairment of mental or emotional condition" 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.

(g) "Other persons named in the report" means and is limited to the following persons who are named in a child abuse or maltreatment report other than the subject of the report: a child who is reported to the Statewide Central Register of Child Abuse and Maltreatment and such child's parent, guardian or other persons legally responsible for the child who has not been named in the report as being allegedly responsible, in whole or in part, for the abuse or neglect of the child.

(h) "Physical injury or impairment" and "impairment of physical condition" mean any confirmed harm, hurt or damage resulting in a significant worsening or diminution of a child's physical condition.

(i) "Report" means information submitted to the Statewide Central Register of Child Abuse and Maltreatment concerning a child who has allegedly been abused or neglected while receiving residential care.

(j) "Residential care" means care provided to a child:

(1) who has been placed by the family court with a social services official or the office, or whose care and custody or custody and guardianship has been transferred or committed to a social services official, another authorized agency, or the office and such care is provided in a child care institution, a group home or an agency operated boarding home;

(2) in a facility or program operated or certified by the office pursuant to article 19-G or 19-H of the Executive Law, excluding foster family care;

(3) in the New York State School for the Blind or the New York State School for the Deaf, pursuant to the provisions of articles 87 and 88 of the Education Law;

(4) in a private residential school within the State, which is approved by the commissioner of education for special education services or programs;

(5) in institutions for the instruction of the deaf and the blind which have a residential component and are subject to the visitation of the commissioner of education pursuant to article 85 of the Education Law;

(6) through a residential placement with a special act school district listed in chapter 566 of the laws of 1967, as amended;

(7) in a residential facility licensed or operated by the Office of Mental Health, excluding family care homes;

(8) in a residential facility licensed or operated by the Office of Mental Retardation and Developmental Disabilities, excluding family care homes;

(9) in an inpatient or residential setting certified by the Office of Alcoholism and Substance Abuse Services, which has been specifically designated by such office as serving youth; or

(10) by an authorized agency licensed to provide both care specified in paragraph (1) of this subdivision and care specified in paragraph (7), (8) or (9) of this subdivision.

(k) "Subject of a report of abuse or neglect of a child in residential care" means any custodian of a child in residential care who is reported to the Statewide Central Register of Child Abuse and Maltreatment for the alleged abuse or neglect of such child.

(l) "Unfounded report" means any report made to the Statewide Central Register of Child Abuse and Maltreatment where an investigation determines that there is insufficient evidence to indicate the report pursuant to subdivision (e) of this section.

Section 433.3 of Title 18 is amended to read as follows:

(a) Obligations of the [department] office.

(1) It is the obligation of the [department] office to investigate reports received by the [State] Statewide Central Register of Child Abuse and Maltreatment concerning abused

or maltreated children receiving residential care. The investigation of such reports shall begin within 24 hours after the report is received by the [State] Statewide Central Register of Child Abuse and Maltreatment.

(2) In order to comply with the [department's] office's obligation set forth in paragraph (1) of this subdivision, staff of the [department] office will contact the authorized agency operating a residential care facility and, where appropriate, the facility operator/director during all investigations of allegations contained in a report of child abuse or maltreatment and provide written notice to such agency and/or individual of the existence of the report. During the investigation, staff of the [department] office will interview the subject(s) of the report and, where necessary, other persons named in the report, other facility staff and children receiving care in the facility.

(3) Within seven days after receipt by the [State] Statewide Central Register of Child Abuse and Maltreatment of a report concerning an abused or neglected child, the [department] office will provide notice of the existence of such report to the subject of the report, to the agencies responsible for the child's placement in a residential care facility and to the child's parents, [or] guardian, or other person legally responsible for the child.

(4) Not later than seven days after receipt of the report, staff of the [department] office will send to the [State] Statewide Central Register of Child Abuse and Maltreatment a written report of the initial investigation which includes, whenever practical, an evaluation of whether or not such report constitutes an allegation of child abuse or neglect and actions taken or contemplated. If such investigation results in a determination that the report does not constitute an allegation of child abuse or neglect, the [department] office will refer such report to the appropriate State licensing agency or operating agency,

provided, however, that the name and other personally identifiable information of the person making the report will not be provided by the [department] office unless such person authorizes such disclosure.

(5) The office has 60 days to complete the investigation and make the following determinations:

(i) whether the report is indicated or unfounded;

(ii) whether there is reasonable cause to suspect that the child's parent, guardian or other person legally responsible for the child other than a custodian of the child, abused or maltreated the child;

(iii) whether it appears likely that a crime may have been committed against the child;  
and

(iv) whether it appears that a violation of the statutory, regulatory or other requirements of the licensing agency or operating State agency relative to the care and treatment of individuals receiving services has occurred.

(6) [(5)] If, as a result of the investigation of a report received by the [State] Statewide Central Register of Child Abuse and Maltreatment concerning an abused or neglected child receiving residential care, it is determined that the report should be indicated, the [department] office will[,];

(i) within seven days of making such determination, inform the subject of the determination and will give the subject of the report notice of the right to request amendment or expungement of the record, if the report was received by the [State] Statewide Central Register of Child Abuse and Maltreatment prior to February 12, 1996, or amendment of the report, if the report was received by the [State] Statewide Central Register of Child Abuse and Maltreatment on or after February 12, 1996, as well as the

right to request a fair hearing in accordance with the provisions of subdivision 8 of section 422 of the Social Services Law[.];

(ii) [Upon a determination that a report of child abuse and neglect concerning an abused or neglected child receiving residential care is indicated, the department will,] within seven days of making such determination, notify the child's parents, [or] guardians or other person legally responsible for the child and transmit copies of the report to the director or operator of the residential care facility, to the authorized agency responsible for the child's placement in the residential facility, the appropriate licensing or operating State agency or, within such office, to the appropriate office staff and, where known, any law guardians appointed to represent the child whose appointment has been continued by a Family Court judge during the term of the child's placement[. The department has 60 days to complete the investigation.]; and

(iii) 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 or the subject of the report of child abuse or maltreatment. Such preventive and remedial actions may include enforcement or disciplinary actions authorized under section 460-d of the Social Services Law, sections 503 and 532-e of the Executive Law, articles 7, 13, 16, 19, 31 or 32 of the Mental Hygiene Law, or applicable collective bargaining agreements.

(7) [(6)] If, as a result of the investigation of a report received by the [State] Statewide Central Register of Child Abuse and Maltreatment concerning an abused or neglected child receiving residential care, it is determined that the report is unfounded, the [department] office will inform the subject of the report [of the determination.], [The department also will inform] the child's parent, [or] guardian or other person legally

responsible for the child, the director or operator of the residential facility, [and] the agency responsible for the child's placement in a residential care facility and the appropriate licensing or operating State agency or, within such office, the appropriate office staff [upon a] of the determination [that a report concerning a child receiving residential care is unfounded].

(8) If, as the result of the investigation of a report received by the Statewide Central Register of Child Abuse and Maltreatment concerning an abused or neglected child receiving residential care, it is determined that there is reasonable cause to suspect that the child's parent, guardian or other person legally responsible for the child other than a custodian of the child, abused or maltreated the child, the office will make a separate report to the Statewide Central Register of Child Abuse and Maltreatment for investigation by the applicable local child protective service, unless such a report has already been transmitted.

(9) If, as the result of the investigation of a report received by the Statewide Central Register of Child Abuse and Maltreatment concerning an abused or neglected child receiving residential care, it is determined that it appears likely that a crime may have been committed against the child, regardless of whether a report is indicated or unfounded, the office will:

(i) transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted;

(ii) within seven days of making such determination, notify the child's parents, guardians or other person legally responsible for the child and transmit copies of the report to the director or operator of the residential care facility, to the authorized agency responsible for the child's placement in the residential facility, the appropriate licensing or operating

State agency or, within such office, to the appropriate office staff and, where known, any law guardians appointed to represent the child whose appointment has been continued by a Family Court judge during the term of the child's placement; and

(iii) 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 or the subject of the report of child abuse or maltreatment. Such preventive and remedial actions may include enforcement or disciplinary actions authorized under section 460-d of the Social Services Law, sections 503 and 532-e of the Executive Law, articles 7, 13, 16, 19, 31 or 32 of the Mental Hygiene Law, or applicable collective bargaining agreements.

(10) If, as the result of the investigation of a report received by the Statewide Central Register of Child Abuse and Maltreatment concerning an abused or neglected child receiving residential care, it is determined that it appears that a violation of the statutory, regulatory or other requirements of the licensing agency or operating State agency relative to the care and treatment of individuals receiving services has occurred, regardless of whether a report is indicated or unfounded, the office will:

(i) within seven days of making such determination, notify the child's parents, guardians or other person legally responsible for the child and transmit copies of the report to the director or operator of the residential care facility, to the authorized agency responsible for the child's placement in the residential facility and the appropriate licensing or operating State agency or, within such office, to the appropriate office staff; and

(ii) 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 or the subject of the report of child abuse or maltreatment. Such preventive and remedial

actions may include enforcement or disciplinary actions authorized under section 460-d of the Social Services Law, sections 503 and 532-e of the Executive Law, articles 7, 13, 16, 19, 31 or 32 of the Mental Hygiene Law, or applicable collective bargaining agreements.

(b) Obligation of authorized agencies and residential care facilities.

(1) An authorized agency which operates a facility providing residential child care and staff of such facility will cooperate with the office [department] during the investigation of a report of child abuse and maltreatment concerning a child who is receiving care in the facility. Such agency and facility will protect the child named in a child abuse and maltreatment report from possible further abuse or maltreatment. Such agency or facility will not restrict or prohibit access by investigators of the office [department] to a child who is cared for by such facility and who is named in a report of child abuse and maltreatment, the subjects of the reports, other persons named in the reports and any other individuals who may have information which would assist the investigators in the performance of their duties. Authorized agencies which operate facilities providing residential child care and such facilities also will make all appropriate records maintained by such agencies and facilities, and the policy manuals required to be maintained by section 441.4 of this Title, available to such investigators.

(2) Authorized agencies which operate facilities providing residential child care will designate a person or persons for each group home or institution operated by the agencies who will be available onsite on weekdays, weeknights and weekends to assist staff of the [department] office in their investigation of reports of child abuse and maltreatment and who will have responsibility for assisting the [department] office in determining whether the agencies are protecting children named in such reports and other children receiving

care from such agencies. Such agencies will inform the [department] office in writing of the names and home and work telephone numbers of the persons designated by authorized agencies pursuant to this subdivision.

(3) Upon notification of the existence of a report of child abuse or maltreatment, the director or operator of a residential care facility will take all reasonable steps to preserve any potential evidence of the abuse or maltreatment and will obtain proper medical evaluations, where appropriate, of any injury, sickness or impairment which was caused to a child as a result of such abuse or maltreatment, if such evaluations were not obtained prior to receipt of notification of the report.

(4) (i) The director or operator of a residential care facility and the authorized agency which operates such facility will be responsible for protecting [ensuring] the health and safety [and protection] of the child named in a report of child abuse and maltreatment and other children residing in the facility. Immediately upon notification of the existence of a report concerning a child receiving care in the facility, the director or operator of the residential child care facility will evaluate the situation and take appropriate action to protect [ensure] the health and safety of the child named in the child abuse and maltreatment report and of any other children residing in the facility. If it appears likely that a crime has been committed against a child, the director or operator of the residential child care facility must immediately notify the appropriate law enforcement agency or confirm that such notification has already been made.

(ii) To protect [ensure] the health and safety of the child named in the child abuse and maltreatment report and of any other children residing in the facility, the director or operator of a residential care facility will, where necessary, evaluate whether it is appropriate to separate the child named in the child abuse and maltreatment report or

other children residing in the facility from the subject of the report. Where separation is necessary, the director or operator of a residential care facility will, when in the best interests of the children residing in the facility, dismiss, suspend or transfer the subject of a child abuse and maltreatment report or take such other appropriate action which will separate [ensure the separation of] the child or other children from the subject. Where a subject is not dismissed or suspended the provisions of subparagraph (iii) of this paragraph will apply.

(iii) Where the dismissal or suspension of the subject of a report is not necessary in order to protect the children receiving care in a residential child care facility, the director or operator of a residential child care facility will, as appropriate:

- (a) increase supervision over the subject of a report;
- (b) provide instruction or technical assistance to the subject of a report;
- (c) initiate appropriate disciplinary action against the subject of a report; and/or
- (d) provide appropriate training to and/or increased supervision of staff and of volunteers in the residential care facility pertinent to the prevention and remediation of abuse and maltreatment.

Nothing within this subparagraph prohibits the dismissal, suspension or transfer of a subject of a report if such action is in the best interests of children receiving care in a residential child care facility.

(iv) For every child receiving residential care who is alleged to be abused or maltreated or who is named in an indicated report of child abuse and maltreatment, the director or operator of a residential facility will:

- (a) provide counseling to the child named in the report and to any other children who the director or operator of the facility considers appropriate to receive such counseling;

(b) provide medical services to the child named in the report and to any other children who, as a result of such report, need such services; and

(c) where it is determined that there is a risk to the health or safety of such children if such children remain in the living unit, as an emergency measure, transfer the children within the facility. Such transfer will be reported as soon as possible to the appropriate regional office of the [department] office and to the appropriate authorized agency responsible for the placement of such children in the facility during such regional office's and agency's normal business hours.

Any action taken under this paragraph should cause as little disruption as possible to the daily routines of the children in the program.

(5) Upon commencing an investigation, the investigator will be informed by the director or operator of the facility of the activities taken by the facility to provide for the safety and protection of the child named in the child abuse and maltreatment report and other children who are residing in the facility. In addition, when directed by the [department's] office's investigator, appropriate staff of a residential care facility will take such additional specific actions as directed by the investigator to protect [ensure] the health and safety [and protection] of the child named in a report of a child abuse and maltreatment and other children residing in the facility. The investigator will also inform in writing the director of the agency which operates the facility, or the director's designee, of the specific action which staff of the facility have been directed by the investigator to take to protect [ensure] the health and safety [and protection] of a child residing in the facility.

Section 433.4 of Title 18 is amended to read as follows:

(a) Whenever an authorized agency which operates a residential child care facility or provides care in a facility or program described in section 432.12(b)(3)(viii) of this Title is notified that a report of child abuse or neglect is indicated or that a report of child abuse or neglect is unfounded and the office has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services, a prevention and remediation plan must be developed by the facility in consultation with appropriate staff of the agency, in accordance with the provisions of subdivision (c) or (d) of this section, and submitted to the [department's] office's regional office director by the facility. Such plan will describe the activities to be taken by the facility with respect to the subject of the report to protect [assure] the continued health and safety of the child who is named in the report and all other children who are receiving care in the facility. Such plan will also describe the activities to be undertaken by the facility to prevent the recurrence of [ensure that] child abuse and [or] neglect [does not recur]. In addition, such plan will describe the actions taken to address the office's findings.

(b) The prevention and remediation plan required to be developed by this section will, where necessary, incorporate the activities identified in section 433.3(b) of this Part.

(c) (1) If a report of child abuse and neglect concerning a child receiving care in a residential child care facility operated by an authorized agency, including a program described in section 432.12(b)(3)(viii) of this Title, is indicated and it is determined by the [department] office that the report [incident] of abuse and neglect pertains to the actions or in actions of an employee or several employees of the agency or facility or program but is unrelated to the failure of the facility or agency or program in whole or in

part to operate in accordance with the regulations of the [department] office or, for reports involving a facility or program described in section 432.12(b)(3)(viii) of this Title, the regulations of the Office of Mental Health, the director or operator of the facility or program will submit the required prevention and remediation plan to the [department] office within 10 business days of receipt of the notice which informs such individual that the report of child abuse or neglect is indicated.

(2) Prevention and remediation plans submitted to the [department] office pursuant to paragraph (1) of this subdivision will be approved or disapproved by the [department] office within 10 business days of the receipt of such plans. Within such 10-day period, the [department] office will inform the facility which submitted such plan and the authorized agency which operates the facility of any necessary revisions which must be made in the plan. If revisions are necessary, the facility will, after consulting with appropriate staff of the authorized agency which operates the facility, submit a revised plan to the [department] office within five business days after receiving notice that revisions must be made in the plan. The [department] office will have five business days after receipt of the revisions to either approve or disapprove such revisions.

(d) (1) If a report of child abuse and neglect concerning a child receiving care in a residential child care facility is indicated and it is determined by the [department] office that the report [incident] of abuse or neglect may be attributable in whole or in part to noncompliance by the facility or the agency, including a program described in section 432.12(b)(3)(viii) of this Title, with the provisions of article 7 of the Social Services Law or the regulations applicable to the operation of residential care facilities, the director or operator of such facility or program and the director of the authorized agency which operates the facility or program, or his or her designee, will, in consultation with

appropriate regional office of the [department] office, develop a written plan of prevention and remediation.

(2) Prior to developing such plan and within five business days of receipt by the director or operator of the facility of a notice which informs such individual that the report of child abuse and neglect is indicated, the director or operator of the facility or program will contact the appropriate regional office of the [department] office, either in person or by telephone, to discuss the contents of such plan.

(3) After the operator or director of the facility or program has contacted the appropriate regional office of the department in accordance with the provisions of paragraph (2) of this subdivision, the director or operator of the facility or program, after consulting with appropriate staff of the authorized agency which operates the facility or program, will submit the written plan of prevention and remediation to the office [department]. 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. The plan will set forth the activities which the facility or program and the agency plan to take to comply with the provisions of article 7 of the Social Services Law and the regulations of the [department] office. Such plan will be approved or disapproved by the [department] office within 10 business days of the receipt of such plan. Within such 10-day period, the [department] office will inform the facility or program which submitted the plan of any necessary revisions which should be made to the plan. If revisions are necessary, the facility will, after consulting with appropriate staff of the authorized agency which operates the facility or program, submit a revised plan to the [department] office within five business

days after receiving notice that revisions should be made to the plan. The [department] office will have five business days after receipt of the revisions to either approve or disapprove such revisions.

(e) The [department] office will be responsible for monitoring the implementation of any plans submitted pursuant to this section. The failure of a residential child care facility to comply with the provisions of such plan will be taken into consideration whenever such facility is under review for purposes of determining whether the operating certificate of the facility should be renewed, revoked or suspended.

(f) Nothing in this section prevents the commissioner from making recommendations regarding appropriate preventive and remedial actions, [even though the investigation may fail to result in a determination that there is some credible evidence of child abuse or neglect] regardless of whether a report is indicated or unfounded.

Subdivision (a) of section 434.1 of Title 18 is amended to read as follows:

(a) Hearings held pursuant to section 422 of the Social Services Law to determine by a fair preponderance of the evidence whether the record of a report maintained in the State Central Register of Child Abuse and Maltreatment should be amended or expunged and, if such report is indicated, whether the act or acts of child abuse or maltreatment described in such report could be relevant and reasonably related to the appropriateness of the subject to engage in child care employment or to become an adoptive parent, a foster parent or a day care provider.

Subdivision (b) of section 434.2 of Title 18 is amended to read as follows:

(b) *Appellant* means (1) a subject of an indicated report of child abuse or maltreatment who has requested a hearing pursuant to section 422 of the Social Services Law to determine whether the subject has been shown by a fair preponderance of the [some

credible] evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether such act or acts could be relevant and reasonably related to the appropriateness of the subject to engage in child care employment or to become an adoptive parent, a foster parent, or a day care provider, or (2) a [the] subject of an indicated report who has requested a hearing pursuant to section 424-a of the Social Services Law to determine whether the subject [he or she] has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

Subdivision (d) of section 434.2 of Title 18 is amended to read as follows:

(d) *Commissioner* means the [State] Commissioner of [Social Services] the New York State Office of Children and Family Services.

Subdivision (e) of section 434.2 of Title 18 is amended to read as follows:

(e) *Department or Office* means the New York State [Department of Social Services] Office of Children and Family Services.

Subdivision (a) of section 434.3 of Title 18 is amended to read as follows:

(a) A subject of a report of child abuse or maltreatment has a right to a hearing pursuant to section 422 of the Social Services Law to determine whether the record of the report in the [State] Statewide Central Register of Child Abuse and Maltreatment should be amended or, if the report was received by the [State] Statewide Central Register of Child Abuse and Maltreatment prior to February 12, 1996, amended or expunged on the grounds that it is inaccurate or is being maintained in a manner inconsistent with title 6 of article 6 of the Social Services Law. The burden of proof at such hearing is on the [department] office, appropriate local child protective service or the Commission on Quality of Care [for the Mentally Disabled] and Advocacy for Persons with Disabilities,

as the case may be. The issues at the hearing are : (1) whether the subject has been shown by [some credible] a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, where it has been determined at the administrative review that the act or acts of child abuse or maltreatment giving rise to the indicated report would not be relevant and reasonably related to the employment of the subject by provider agencies or the approval or disapproval of applications which would be submitted by the subject to licensing agencies; or (2) whether the subject has been shown by [some credible] a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report and, if there is a finding of [some credible] a fair preponderance of the evidence, whether such act or acts are, based on guidelines developed by the [department] office, relevant and reasonably related to the employment of the subject by provider agencies, or the approval or disapproval of applications which [are] would be submitted by the subject to licensing agencies.

Subdivision (f) of section 434.10 of Title 18 is amended to read as follows:

(f) A Family Court finding, in a proceeding brought pursuant to article 10 of the Family Court Act, that a child has been abused or neglected is presumptive evidence that the report of child abuse and maltreatment maintained by the [State] Statewide Central Register of Child Abuse and Maltreatment concerning such child is substantiated by [some credible] a fair preponderance of the evidence if the allegations are the same; however, dismissal or withdrawal of a Family Court petition does not create a presumption that there is a lack of [some credible] a fair preponderance of the evidence to prove that a child has been abused or maltreated for purposes of this Part.

Section 166-1.4 of Title 9 is amended to read as follows:

The [Division for Youth] Office of Children and Family Services shall develop written procedures, available onsite at each residential facility or program, for the protection of youth when there is reason to believe an incident has occurred which would render a youth an abused or neglected child in residential care as defined in section [412] 412-a of the Social Services Law. Such procedures shall include, but not be limited to, the following:

(a) Notifications. Immediate notification of suspected incidents of abuse or maltreatment shall be made to:

(1) the [State] Statewide Central Register of Child Abuse and Maltreatment;

(2) [and/or] local law enforcement officials, [as appropriate] if it appears likely that a crime has been committed against a child, or confirm that such notification has already been made; and

~~[(2)]~~ (3) the deputy director for program operations.

(b) Investigation procedures. Immediately upon notification that a report of child abuse or maltreatment has been made to the [State] Statewide Central Register of Child Abuse and Maltreatment and/or local law enforcement officials, the director of the facility or his or her designee shall:

(1) initiate an internal investigation;

(2) preserve any potential evidence;

(3) obtain proper medical evaluation and/or treatment for the youth, as needed, with documentation of any evidence of abuse or maltreatment; and

(4) provide necessary assistance to the [State Department of Social Services] Office of Children and Family Services and/or local law enforcement officials in their investigation thereof.

(c) Safety procedures. Upon notification that a report of child abuse or maltreatment has been made to the [State] Statewide Central Register of Child Abuse and Maltreatment and/or local law enforcement officials with respect to a youth in the residential facility or program, the director or his or her designee shall evaluate the situation and immediately take appropriate action to protect [assure] the health and safety of the youth involved in the report and of any other youth similarly situated in the facility or program. Additional action shall be taken whenever necessary to prevent future incidents of child abuse and maltreatment. Any action taken should cause as little disruption as possible to the daily routines of the youth in program. The following alternatives shall be considered in determining the course of action that will be taken with regard to a specific incident of alleged abuse or maltreatment:

- (1) removal or transfer of the [alleged perpetrator] subject of the report, consistent with appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;
- (2) initiation of disciplinary action against the [alleged perpetrator] subject of the report, consistent with appropriate collective bargaining agreement(s) and provisions of the Civil Service Law;
- (3) increasing the degree of supervision of the [alleged perpetrator] subject of the report;
- (4) provision of counseling to the [alleged perpetrator] subject of the report;
- (5) provision of increased training to staff and volunteers pertinent to the prevention and remediation of abuse and maltreatment;
- (6) removal or transfer of the youth consistent with applicable placement procedures if it is determined that there is a risk to such youth in remaining in that facility or program.

The deputy director for program operations shall be notified of any such removal or transfer; and

(7) provision of counseling to the youth involved in the report and any other youth, as appropriate.

(d) Corrective action plans. Upon receipt from the [Department of Social Services] Office of Children and Family Services of an indicated report of child abuse or maltreatment or an unfounded report of child abuse or maltreatment where the Office of Children and Family Services has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services, the director of the facility or program, in conjunction with the district supervisor, with consideration of any appropriate recommendations received from the [Department of Social Services] Office of Children and Family Services for preventative and remedial action, including legal action, shall:

(1) within 10 calendar days of receipt of an indicated report of child abuse or maltreatment, develop and implement a written plan of action to be taken with respect to an individual employee or volunteer to protect [assure] the continued health and safety of the youth in program and to provide for the prevention of future acts of abuse or maltreatment, which plan shall include, at a minimum, those actions taken pursuant to subdivision (c) of this section. Such plan will also describe the actions taken to address the office's findings. The plan shall be submitted to and approved by the deputy director for program operations and, upon approval, implemented; and

(2) in the event an investigation of such a report [of alleged child abuse or maltreatment] indicates that [some credible evidence of abuse and maltreatment exists and] such abuse

or maltreatment may be attributed in whole or in part to noncompliance by the facility or program with provisions of [the Child Abuse Prevention Act of 1985] article 7 of the Social Services Law, article 19-G of the Executive Law or applicable [division] office regulations, develop and implement a plan of prevention and remediation which, at a minimum, shall address each area of noncompliance and indicate how the facility or program will come into compliance with [the act and] article 7 of the Social Services Law, article 19-G of the Executive Law or the regulations of the office. Such plan will also describe the actions taken to address the office's findings. Such plan shall be submitted to and approved by the deputy director for program operations and, upon approval, implemented.

Subdivision (h) of section 180.3 of Title 9 is amended to read as follows:

(h) "Division" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Division for Youth.

Subdivision (i) of section 180.3 of Title 9 is amended to read as follows:

(i) "Board" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Board of Social Welfare.

Subdivision (j) of section 180.3 of Title 9 is amended to read as follows:

(j) "Department" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Department of Social Services.

A new subdivision (m) of section 180.3 of Title 9 is added to read as follows:

(m) "Office" shall mean the New York State Office of Children and Family Services.

Paragraph (3) of subdivision (b) of section 180.5 of Title 9 is amended to read as follows:

(3) Each detention facility shall develop written procedures, available onsite, for the protection of youth when there is reason to believe an incident has occurred which would

render a youth an abused or neglected child in residential care as defined in section [412] 412-a of the Social Services Law. Such procedures shall include, but not be limited to, the following:

(i) Notifications. Immediate notification of suspected incidents of abuse or maltreatment shall be made to:

(a) the [State] Statewide Central Register of Child Abuse and Maltreatment;

(b) [and/or] local law enforcement officials, [as appropriate] if it appears likely that a crime has been committed against a child, or confirm that such notification has already been made; and

[(b)] (c) the [division] office and the facility's administrative agency.

(ii) Investigation procedures. Immediately upon notification that a report of child abuse or maltreatment has been made to the [State] Statewide Central Register of Child Abuse and Maltreatment and/or local law enforcement officials, the director of the facility or his or her designee shall:

(a) initiate an internal investigation;

(b) preserve any potential evidence;

(c) obtain proper medical evaluation and/or treatment for the youth, as needed, with documentation of any evidence of abuse or maltreatment; and

(d) provide necessary assistance to the [State Department of Social Services] office and/or local law enforcement officials in their investigation thereof.

(iii) Safety procedures. Upon notification that a report of child abuse or maltreatment has been made to the [State] Statewide Central Register of Child Abuse and Maltreatment and/or local law enforcement officials with respect to a youth in the detention facility, the director or his or her designee shall evaluate the situation and immediately take

appropriate action to protect [assure] the health and safety of the youth involved in the report and of any other youth similarly situated in the facility. Additional action shall be taken whenever necessary to prevent future incidents of child abuse and maltreatment.

Any action taken should cause as little disruption as possible to the daily routines of the youth in program. The following alternatives shall be considered in determining the course of action that will be taken with regard to a specific incident of alleged abuse or maltreatment:

- (a) removal or transfer of the [alleged perpetrator] subject of the report, consistent with appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;
  - (b) initiation of disciplinary action against the [alleged perpetrator] subject of the report, consistent with appropriate collective bargaining agreement(s) and provisions of the Civil Service Law;
  - (c) increasing the degree of supervision of the [alleged perpetrator] subject of the report;
  - (d) provision of counseling to the [alleged perpetrator] subject of the report;
  - (e) provision of increased training to staff and volunteers pertinent to the prevention and remediation of abuse and maltreatment;
  - (f) removal or transfer of the youth consistent with applicable placement procedures if it is determined that there is a risk to such youth in remaining in that facility. The [division] office shall be notified of any such removal or transfer; and
  - (g) provision of counseling to the youth involved in the report and any other youth, as appropriate.
- (iv) Corrective action plans. Upon receipt from the [Department of Social Services] office of an indicated report of child abuse or maltreatment or an unfounded report of

child abuse or maltreatment where the office has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services, the director of the facility, with consideration of any appropriate recommendations received from the [Department of Social Services] office for preventative and remedial action, including legal action, shall:

(a) within 10 calendar days of receipt of an indicated report of child abuse or maltreatment, develop and implement a written plan of action to be taken with respect to an individual employee or volunteer to protect [assure] the continued health and safety of the youth in program and to provide for the prevention of future acts of abuse or maltreatment, which plan shall include, at a minimum, those actions taken pursuant to subparagraph (iii) of this paragraph. Such plan will also describe the actions taken to address the office's findings. The plan shall be submitted to and approved by the [division] office; and

(b) in the event an investigation of such a report [of alleged child abuse or maltreatment] indicates that [some credible evidence of abuse and maltreatment exists and] such abuse or maltreatment may be attributed in whole or in part to noncompliance by the facility with provisions of [the Child Abuse Prevention Act of 1985] article 7 of the Social Services Law, article 19-G of the Executive Law or [this Part] the regulations of the office, develop and implement a plan of prevention and remediation which, at a minimum, shall address each area of noncompliance and indicate how the facility will come into compliance with [the act] article 7 of the Social Services Law, article 19-G of the Executive Law and the applicable regulations. Such plan will also describe the actions

taken to address the office's findings. Such plan shall be submitted to and approved by the [division] office and, upon approval, implemented.

Subdivision (i) of section 182-1.2 of Title 9 is amended to read as follows:

(i) "Department" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Department of Social Services.

Subdivision (j) of section 182-1.2 of Title 9 is amended to read as follows:

(j) "Division" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Division for Youth.

A new subdivision (v) of section 182-1.2 of Title 9 is added to read as follows:

(v) "Office" shall mean the New York State Office of Children and Family Services.

Subdivision (b) of section 182-1.12 of Title 9 is amended to read as follows:

(b) Child abuse prevention plan. Each residential program shall develop written procedures, available onsite, for the protection of youth when there is reason to believe an incident has occurred which would render a youth an abused or neglected child, as defined in the Social Services Law. Such procedures shall include, but not be limited to, the following:

(1) Notification. Immediate notification of suspected incidents of abuse or maltreatment shall be made to:

(i) the [statewide central register of child abuse and maltreatment] Statewide Central Register of Child Abuse and Maltreatment;

(ii) [and, if applicable, to] local law enforcement officials, if it appears likely that a crime has been committed against a child, or confirm that such notification has already been made; and

(ii) (iii) the [division] office and the program's administrative agency.

(2) Investigation procedures. Immediately upon notification that a report of child abuse or maltreatment has been made to the [statewide central register of child abuse and maltreatment] Statewide Central Register of Child Abuse and Maltreatment, the director of the program or his or her designee shall:

- (i) initiate an internal investigation;
- (ii) preserve any potential evidence;
- (iii) obtain proper medical evaluation and/or treatment for the youth, as needed, with documentation of any evidence of abuse or maltreatment; and
- (iv) provide necessary assistance to the [department] office and, if applicable, local law enforcement officials in their investigation thereof.

(3) Safety procedures. Upon notification that a report of child abuse or maltreatment has been made to the [statewide central register of child abuse and maltreatment] Statewide Central Register of Child Abuse and Maltreatment with respect to a youth in the residential program, the director or his or her designee shall evaluate the situation and immediately take appropriate action to protect [assure] the health and safety of the youth involved in the report and of any other youth similarly situated in the program.

Additional action shall be taken whenever necessary to prevent future incidents of child abuse and maltreatment. Any action taken should cause as little disruption as possible to the daily routines of the youth in program. The following alternatives shall be considered in determining the course of action that will be taken with regard to a specific incident of alleged abuse or maltreatment:

- (i) removal or transfer of the [alleged perpetrator] subject of the report, consistent with the policy of the agency's board of directors, appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;

- (ii) initiation of disciplinary action against the [alleged perpetrator] subject of the report, consistent with appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;
  - (iii) increasing the degree of supervision of the [alleged perpetrator] subject of the report;
  - (iv) provision of counseling to the [alleged perpetrator] subject of the report;
  - (v) provision of increased training to staff and volunteers pertinent to the prevention and remediation of abuse and maltreatment;
  - (vi) removal or transfer of the youth, consistent with applicable placement procedures, if it is determined that there is a risk to such youth in remaining in that program. In such case, the county runaway and homeless youth service coordinator and the [division] office shall be notified of any such removal or transfer; and
  - (vii) provision of counseling to the youth involved in the report and any other youth, as appropriate.
- (4) Plans of prevention and remediation. Upon receipt from the [department] office of an indicated report of child abuse or maltreatment or an unfounded report of child abuse or maltreatment where the office has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services, the director of the program shall consider any appropriate recommendations received from the [department] office for preventative and remedial action, including legal action, and shall:
- (i) within 10 calendar days of receipt of an indicated report of child abuse or maltreatment, develop and implement a written plan of action to be taken with respect to an individual employee or volunteer to protect [assure] the continued health and safety of

the youth in program and to provide for the prevention of future acts of abuse or maltreatment, which plan shall include, at a minimum, those actions taken pursuant to paragraph (3) of this subdivision. Such plan will also describe the actions taken to address the office's findings. The plan shall be subject to approval by the [division] office and shall be submitted to the [department] office; and

(ii) in the event an investigation of a report of alleged child abuse or maltreatment indicates that [some credible evidence of abuse or maltreatment exists and such] abuse or maltreatment may be attributed in whole or in part to noncompliance by the program with [provisions] article 7 of the Social Services Law, article 19-H of the Executive Law or [this Subpart] the regulations of the office, develop and implement a plan of prevention and remediation which, at a minimum, shall address each area of noncompliance and indicate how the program will come into compliance with [the act] article 7 of the Social Services Law, article 19-H of the Executive Law and the applicable regulations. Such plan will also describe the actions taken to address the office's findings. Such plan shall be developed in conjunction with and subject to approval by the [division] office, for submission to the [department] office.

(5) Training.

(i) Staff/consultant training. Subject to the amounts appropriated for such purposes, child abuse and maltreatment prevention training shall be provided to all administrators, employees, volunteers and consultants of the program on a regular basis, at least annually. Priority shall be given to the training of administrators, employees, volunteers and those consultants whose duties involve regular and/or substantial contact with youth in residential programs.

(ii) The purpose of such training shall be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill development in at least the following areas:

- (a) child abuse and maltreatment prevention and identification;
- (b) safety and security procedures;
- (c) principles of child development;
- (d) characteristics of the youth in care;
- (e) techniques of group and child management, including crisis intervention;
- (f) laws, regulations and procedures governing the protection of children from abuse and maltreatment, including reporting responsibilities; and
- (g) other relevant information provided by the [division] office.

(iii) Administrators may be exempted by the [division] office from such training requirements upon demonstration of substantially equivalent knowledge or experience.

(6) Instruction of youth. Instruction shall be provided to all youth in techniques and procedures for protection from abuse and maltreatment. Such instruction shall be:

- (i) appropriate for the age, individual needs and particular circumstances of the youth, including the existence of mental, physical, emotional or sensory disabilities and the needs and circumstances within the specific residential program;
- (ii) provided within 72 hours of a youth's admission in a manner which will ensure that all youth receive such instruction; and
- (iii) provided by individuals who possess appropriate knowledge and training and documented by the program.

Subdivision (h) of section 182-2.2 of Title 9 is amended to read as follows:

(h) "Department" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Department of Social Services.

Subdivision (i) of section 182-2.2 of Title 9 is amended to read as follows:

(i) "Division" shall mean the New York State Office of Children and Family Services, which has succeeded the New York State Division for Youth.

A new subdivision (r) of section 182-2.2 of Title 9 is added to read as follows:

(r) "Office" shall mean the New York State Office of Children and Family Services.

Subdivision (b) of section 182-2.11 of Title 9 is amended to read as follows:

(b) Child abuse prevention plan. Each residential program shall develop written procedures, available onsite, for the protection of youth when there is reason to believe an incident has occurred which would render a youth an abused or neglected child in residential care, as defined in section 412-a of the Social Services Law. Such procedures shall include, but shall not be limited to, the following:

(1) Notification. Immediate notification of suspected incidents of abuse or maltreatment shall be made to:

(i) the [statewide central register of child abuse and maltreatment] Statewide Central Register of Child Abuse and Maltreatment;

(ii) [and, if appropriate, to] local law enforcement officials, if it appears likely that a crime has been committed against a child, or confirm that such notification has already been made; and

[(ii)] (iii) the [division] office and the program's administrative agency.

(2) Investigation procedures. Immediately upon notification that a report of child abuse or maltreatment has been made to the [statewide central register of child abuse and

maltreatment] Statewide Central Register of Child Abuse and Maltreatment, the director of the program or his or her designee shall:

- (i) initiate an internal investigation;
- (ii) preserve any potential evidence;
- (iii) obtain proper medical evaluation and/or treatment for the youth, as needed, with documentation of any evidence of abuse or maltreatment; and
- (iv) provide necessary assistance to the department and, if applicable, local law enforcement officials in their investigation thereof.

(3) Safety procedures. Upon notification that a report of child abuse or maltreatment has been made to the [statewide central register of child abuse and maltreatment] Statewide Central Register of Child Abuse and Maltreatment with respect to a youth in the residential program, the director or his or her designee shall evaluate the situation and immediately take appropriate action to protect [assure] the health and safety of the youth involved in the report and of any other youth similarly situated in the program.

Additional action shall be taken whenever necessary to prevent future incidents of child abuse and maltreatment. Any action taken should cause as little disruption as possible to the daily routines of the youth in program. The following alternatives shall be considered in determining the course of action that will be taken with regard to a specific incident of alleged abuse or maltreatment:

- (i) removal or transfer of the alleged subject of the report [perpetrator], consistent with the policy of the agency's board of directors, appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;

- (ii) initiation of disciplinary action against the alleged subject of the report [perpetrator], consistent with appropriate collective bargaining agreement(s) and applicable provisions of the Civil Service Law;
- (iii) increasing the degree of supervision of the alleged subject of the report [perpetrator];
- (iv) provision of counseling to the alleged subject of the report [perpetrator];
- (v) provision of increased training to staff and volunteers pertinent to the prevention and remediation of abuse and maltreatment;
- (vi) removal or transfer of the youth, consistent with applicable placement procedures, if it is determined that there is a risk to such youth in remaining in that program. In such case, the county runaway and homeless youth service coordinator and the division shall be notified of any such removal or transfer; and
- (vii) provision of counseling to the youth involved in the report and any other youth, as appropriate.

(4) Plans of prevention and remediation. Upon receipt from the [department] office of an indicated report of child abuse or maltreatment or an unfounded report of child abuse or maltreatment where the office has determined that it appears likely that a crime may have been committed against a child or that there has been a violation of the statutory, regulatory or other requirements related to the care and treatment of individuals receiving services, the director of the program shall consider any appropriate recommendations received from the [department] office for preventative and remedial action, including legal action, and shall:

- (i) within 10 calendar days of receipt of an indicated report of child abuse or maltreatment, develop and implement a written plan of action to be taken with respect to an individual employee or volunteer to protect [assure] the continued health and safety of

the youth in program and to provide for the prevention of future acts of abuse or maltreatment, which plan shall include, at a minimum, those actions taken pursuant to paragraph (3) of this subdivision. Such plan will also describe the actions taken to address the office's findings. The plan shall be subject to approval by the [division] office and shall be submitted to the [department] office; and

(ii) in the event an investigation of a report of alleged child abuse or maltreatment indicates that [some credible evidence of abuse or maltreatment exists and] such abuse or maltreatment may be attributed in whole or in part to noncompliance by the program with provisions of article 7 of the Social Services Law, article 19-H of the Executive Law or [this Subpart] the regulations of the office, develop and implement a plan of prevention and remediation which, at a minimum, shall address each area of noncompliance and indicate how the program will come into compliance with [the act] article 7 of the Social Services Law, article 19-H of the Executive Law and the applicable regulations. Such plan will also describe the actions taken to address the office's findings. Such plan shall be developed in conjunction with and subject to approval by the [division] office, for submission to the [department] office.

(5) Training.

(i) Staff/consultant training. Subject to the amounts appropriated for such purposes, child abuse and maltreatment prevention training shall be provided to all administrators, employees, volunteers and consultants to the program on a regular basis, at least annually. Priority shall be given to the training of administrators, employees, volunteers and those consultants whose duties involve regular and/or substantial contact with youth in residential programs.

(ii) The purpose of such training shall be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill development in at least the following areas:

- (a) child abuse and maltreatment prevention and identification;
- (b) safety and security procedures;
- (c) principles of child development;
- (d) characteristics of the youth in care;
- (e) techniques of group and child management, including crisis intervention;
- (f) laws, regulations and procedures governing the protection of children from abuse and maltreatment, including reporting responsibilities; and
- (g) other relevant information provided by the office [division].

(iii) Administrators may be exempted by the [division] office from such training requirements upon demonstration of substantially equivalent knowledge or experience.

(6) Instruction of youth. Instruction shall be provided to all youth in techniques and procedures for protection from abuse and maltreatment. Such instruction shall be:

- (i) appropriate for the age, individual needs and particular circumstances of the youth, including the existence of mental, physical, emotional or sensory disabilities and the needs and circumstances within the specific residential program;
- (ii) provided within 72 hours of a youth's admission in a manner which will ensure that all youth receive such instruction; and
- (iii) provided by individuals who possess appropriate knowledge and training and documented by the program.