



Andrew M. Cuomo
Governor

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

Gladys Carrión, Esq.
Commissioner

Administrative Directive

Transmittal:	13-OCFS-ADM-09
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Day Care Licensing Supervisors Day Care Providers
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	August 29, 2013
Subject:	Justice Center Staff Exclusion List Clearance Requirements
Suggested Distribution:	Directors of Social Services Foster Care and Adoption Supervisors Day Care Administrative Staff Voluntary Agency Staff
Contact Person(s):	Questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office- Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.ny.gov Rochester Regional Office- Karen Buck (585) 238-8201 Karen.Buck@ocfs.ny.gov Syracuse Regional Office- Sara Simon (315) 423-1200 Sara.Simon@ocfs.ny.gov Albany Regional Office- Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.ny.gov Spring Valley Regional Office- Yolanda Désarmé (845) 708-2499 Yolanda.Desarme@ocfs.ny.gov New York City Regional Office- Raymond Toomer (212) 383-1808 Raymond.Toomer@ocfs.ny.gov Native American Services- Kim Thomas (716) 847-3123 Kim.Thomas@ocfs.ny.gov
Attachments:	<ul style="list-style-type: none">• Authorized Person Designation/Notarized Sworn Statement Form Request for Staff Exclusion List Check Form• Memorandum about interim process dated August 6, 2013• Request for Staff Exclusion List Check Form
Attachments Available Online:	Yes- Justice Center Forms are at: http://www.justicecenter.ny.gov/resources/forms

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		See emergency regulations filed June 30, 2013 (see link in the <u>Background</u> section	SSL §495; Chapter 501 of the Laws of 2013		

I. Purpose

The purpose of this Administrative Directive (ADM) is to address with local departments of social services (LDSS), voluntary authorized agencies, runaway and homeless youth programs and day care providers the requirements for screening individuals through the Vulnerable Persons’ Central Register (VPCR) administered by the New York State Justice Center for the Protection of People with Special Needs (Justice Center).

II. Background

The Protection of People with Special Needs Act was enacted by Chapter 501 of the Laws of 2012. The Act, which took effect on June 30, 2013, created the VPCR that, among other functions, maintains the Staff Exclusion List (SEL). The SEL contains the names of individuals, including employees, volunteers, interns, consultants or contractors, found responsible for serious or repeated acts of abuse and neglect in programs subject to the jurisdiction of the Justice Center. The Act, in sections 424-a and 495 of the Social Services Law (SSL), requires the following agencies and entities to check the SEL when considering an applicant for employment, volunteering, licensure, certification or approval:

1. Facilities and provider agencies, as defined in section 488(4) of the SSL;
2. Providers of service to persons in programs licensed, certified or funded by any State Oversight Agency, as defined in section 488(4-a) of the SSL; and
3. Any other provider or licensing agencies required to conduct a database check with the Statewide Central Register of Child Abuse and Maltreatment (SCR) under section 424-a of the SSL.

On June 30, 2013, the Office of Children and Family Services (OCFS) filed regulations on an emergency basis to require the following programs or entities to conduct SEL database checks:

- Authorized agencies operating institutions, group residences, group homes, agency operated boarding homes or SILPS (18 NYCRR 442.8, 447.2, 448.3 and 449.4);

- Authorized agencies certifying or approving foster or adoptive parents, including the checking of other adults residing in the home of the applicant (18 NYCRR 421.11, 421.16, 421.19 and 443.2);
- Authorized agencies approving respite homes (18 NYCRR 435.6);
- Authorized agencies that operate adoption programs (18 NYCRR 421.25);
- Runaway and homeless youth programs and transitional independent living support programs (9 NYCRR 182-1.5 and 182-2.15);
- Juvenile detention facilities (9 NYCRR 180.5);
- School-age child care, group family day care, family day care, day care centers, and small day care centers (18 NYCRR 414.10, 416.13, 416.15, 417.15, 418-1.10 and 418-2.15);
- Family type homes for adults (18 NYCRR 489.4).

The OCFS regulations can be found at, <http://ocfs.ny.gov/main/legal/Regulatory/er> (the emergency regulations will only be available for a limited time at this link, after which the finalized regulations will be available in the New York Codes, Rules, and Regulations). These regulations require that SEL database checks be conducted before determining whether to hire or otherwise allow any person to be an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children or adults being served by the agency. With respect to the licensure, registration, certification or approval of a foster parent, adoptive parent, family or group family day care provider, family type home for adults or respite homes, a SEL database check must be completed on the applicant and other adults residing in the home of the applicant.

The SEL background check requirements took effect on June 30, 2013.

III. Required Action

The agencies and entities listed in the background section above as being required to conduct SEL background checks, must designate one or more persons who are authorized to request such checks on behalf of the agency or entity and receive the results of the SEL check performed by the Justice Center. The agency or entity must complete the attached form entitled “Authorized Person Designation/Notarized Sworn Statement Form” and submit it to the address noted on the form as soon as possible.

Once the designated person has been established, to request the SEL database checks as required, the agency’s or entity’s authorized person must complete and fax to the Justice Center the “Request for Staff Exclusion List Check Form,” a copy of which is attached. The Justice Center will send the authorized person an email indicating the results of the SEL database check.

If the person being checked is listed on the SEL, he or she **may not** be hired in a position involving regular and substantial contact with a vulnerable person (child or

adult) in a facility or provider agency as defined in section 488(4) of the SSL. For the purposes of this release, the programs within the jurisdiction of OCFS that are included within section 488(4) of the SSL are residential facilities for children issued an operating certificate by OCFS; runaway and homeless youth programs; detention programs; and family type homes for adults.

The mandatory bar for being listed on the SEL **does not apply** to day care programs, foster parents, adoptive parents, respite homes or non-facility staff of local districts or adoption agencies. If the applicant is on the SEL list, the agency or entity can make a determination based on the information it has available whether to certify or approve the applicant, following the guidelines that OCFS has set forth for 424-a clearances. If the agency or entity decides to certify or approve an applicant who is listed on the SEL list, the agency or entity must document the reason for the decision to certify or approve the applicant in a similar manner as to when an applicant is the subject of an indicated child abuse and maltreatment report under section 424-a of SSL.

The SEL database check is **in addition to** criminal history checks required by section 378-a(2) or section 390-b of the SSL and SCR clearances required by section 424-a of the SSL. A criminal history record check and SCR clearance through OCFS are required for day care and foster or adoptive parents regardless of whether or not a person is listed on the SEL.

The SEL check requirements are not retroactive. They do not apply, for example, to persons hired prior to June 30, 2013 or to persons certified, licensed or approved prior to June 30, 2013. A SEL database check is not required for the purpose of renewal of a foster parent's certificate or approval where the foster parent had been certified or approved prior to June 30, 2013.

Completion of the database check of prospective foster parents and other adults residing in the home of the applicant is a condition for full certification or approval of the foster home, which is a condition for the foster care placement to be eligible to receive Title IV-E funding.

For more information on the Justice Center and the VPCR go to:
<http://www.justicecenter.ny.gov/home>

IV. Effective Date

Immediately.

/s/Jeanne Milstein

Issued By:

Name: Jeanne Milstein

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development