

Regulatory Impact Statement

1) Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (OCFS) to establish rules, regulations, and policies to carry out OCFS's powers and duties under the SSL.

Section 34(3)(f) of the SSL authorizes OCFS to establish regulations for the administration of public assistance and care within the State of New York.

Section 390-b(3-b) of the SSL requires OCFS to provide a criminal history disqualification review process for applicants for enrollment, employment, and/or a volunteer position at a child care program who are denied such role based on a non-mandatory disqualifying criminal conviction, to be held and completed before the employer is notified of such denial.

2) Legislative objectives:

New York Social Services Law ("SSL") 390-b(3-b) provides persons denied enrollment, employment, or the ability to volunteer at a licensed, registered, or enrolled child care program due to a non-mandatory criminal conviction "the ability to request a de novo review of the article twenty-three-a of the correction law determination in an administrative hearing before an administrative law judge." Under the general authority of SSL 20(3)(d) and SSL 34(3)(f) OCFS is authorized to establish regulations and policies to carry out powers and duties given to OCFS by statutory provisions such as SSL 390-(3-b). The proposed rule provides a framework by which administrative review/hearings are conducted so that individuals seeking a de novo review are given due process. OCFS interprets these three statutory provisions cited to clearly provide OCFS with the authority to create this regulation to effectuate the goal of due process.

3) Needs and benefits:

This proposed changes to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York are necessary to clarify procedures related to criminal history disqualification reviews for applicants for enrollment, employment, and/or a volunteer position at a child care program who are denied such a role based on a non-mandatory disqualifying criminal conviction. The proposed changes detail the process for requesting and conducting such reviews. The proposed changes would benefit applicants as it provides a meaningful opportunity for such applicants to be heard, prior to notifying the employer of the denial. This

rule change could lead to the applicant being able to obtain an employment opportunity that they would have been unable to before the rule change.

4) Costs:

Any costs are largely born by OCFS, including providing hearing officers, conducting the reviews, and sending out notices and decisions.

5) Local government mandates:

This rule imposes no new mandates on local governments.

6) Paperwork:

This rule results in an increase in paperwork due to correspondence related to reviews, the option for applicants to be heard through written submissions, and additional records that need to be preserved and decisions that need to be issued. Again, this burden is primarily borne by OCFS.

7) Duplication:

This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8) Alternatives:

The agency could have chosen not to amend the regulation and simply rely on existing law. However it was decided to propose the amendments in order to be in compliance and uniform with Federal and State statutes. Federal and state statute require these reviews, and the process needs to be outlined in a clear manner. OCFS could have also issued guidance on the Federal and State statutes however amendments were preferred as regulations reinforce the statutes and are often cited to in ALJ decisions.

9) Federal standards:

This rule is consistent with applicable federal requirements.

10) Compliance Schedule:

This rule becomes effective upon adoption.