

Differential Response for Children Under Twelve (12) Years of Age

NYCRR part 437

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Section 437.1 – Legal Authority

This subpart is established pursuant to Chapter 810 of the Laws of 2021, as amended by Chapter 38 of the Laws of 2022, which provides that the Office of Children and Family Services shall promulgate regulations regarding the differential response for children under 12 years of age who do not fall under the definition of juvenile delinquent under section 301.2 of the Family Court Act, but whose behavior would otherwise bring them under the jurisdiction of Article 3 of the Family Court Act.

Section 437-2 Definitions

- (a) Child Welfare Services Plan means the district-wide plan, as required under 409-d of the Social Services Law.
- (b) Differential Response Program means a program established under these regulations for eligible children under 12 years of age.
- (c) Eligible child means a child under 12 years of age, who does not fall under the definition of juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the Family Court Act and whose behavior, but for their age, would bring them within the jurisdiction of the family court pursuant to Article 3 of the Family Court Act.
- (d) Family shall include but not be limited to biological relationships; relationships through marriage, partnership, or adoption; caretakers of the child; siblings; adults with a positive relationship to the child or child's family; caretakers of any siblings; or other persons whom the eligible child or their family may consider to be critical supports.

Section 437-3 Program Requirement

All local social services districts (districts) are required to establish a differential response program for the eligible children within the district. Services offered through the differential response program are voluntary to the eligible child and their family. Details of the program and the implementation plan must be reflected in the district child welfare services plan.

Section 437-4 Plan Requirement

Districts must include details of their differential response program for children under 12 years of age in their child welfare services plan. Such information must include, but is not limited to the following:

- (a) A description of how the differential responses will enhance the ability of the district to reduce the likelihood of the eligible child's interactions with the juvenile justice and child welfare systems in the

future and ensure the safety and well-being of the eligible children. Such description should also include how any family needs and concerns will be supported.

- (b) A description of how such differential response addresses adverse impacts on marginalized communities.
- (c) A description of the assessments that shall be utilized to determine whether services are necessary and if necessary, the least restrictive interventions that meet the needs of the eligible child and their family. Such tools shall include, but not be limited to, assessment of the eligible child's and their family's strengths, concrete needs, and challenges. Such assessments should consider any individualized vulnerabilities and be responsive to the child and their family's culture.
- (d) A description of services and supports to be provided to the eligible child and their family to include but not be limited to preventive services, if eligible, in accordance with Social Services Law Section 409-a and 18 NYCRR Part 423, and family support services programs as defined in 458-m as required or available, and how the services will be offered. Services offered through the differential response are voluntary and must be identified as such in the plan.
- (e) A description of the process to be followed for how the district will plan and monitor the services provided under the differential response.
- (f) A description of the training to be required for staff engaged in implementation of the differential response. This includes training for district and relevant non-district staff who will be working with eligible children and their families. Such description shall include the training for law enforcement within the district whose main responsibilities are juveniles, pursuant to section 840 of the Executive Law.
- (g) A description of any additional funding that shall be made available to enhance the differential response.

Section 437-5 Records, Retention and Confidentiality

Records created under a district's differential response program shall

- (a) include, at a minimum, information regarding the reason(s) the child was referred to the differential response program, documentation of all services offered and accepted by the eligible child and their family, and all evaluations and assessments of that child's progress; and
- (b) be maintained for five (5) years after an eligible child has been referred to the district or until the eligible child reaches the age of 12, whichever is sooner. The district shall destroy differential response program records when they reach the retention benchmark.

Records are confidential and shall not be disclosed except as set forth in section 458-o(3)(c) of the Social Services Law.