STATE OF NEW YORK

6269--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 12, 2021

Introduced by M. of A. FRONTUS, McDONALD -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to establishing the office of the child welfare advocate

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 49-C to read as follows:

ARTICLE 49-C

OFFICE OF THE CHILD WELFARE ADVOCATE

Section 996. Purpose.

996-a. Definitions.

996-b. Office of the child welfare advocate.

996-c. Duties of the office of the child welfare advocate.

996-d. Access to the office of the child welfare advocate.

996-e. Duties of the director.

996-f. Conduct and scope of mediation and problem-solving.

996-g. Confidentiality of reports.

996-h. Child welfare advocate independent review board.

996-i. Access to records.

§ 996. Purpose. The purpose of this article is to support youth, biological parents, kinship care givers and foster parents, including prospective kinship caregivers or foster parents, in navigating and resolving conflicts concerning application of applicable law, regulation and policy with regard to the provision of out of home care, whether family based or congregate care, child protective services investigations, and preventative services, and to collect and report data concerning the inquiries received.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 996-a. Definitions. As used in this article:

1. "Commissioner" means the commissioner of the office of children and family services.

2. "Director" means the director of the office of the child welfare advocate.

3. "Office" means the office of the child welfare advocate.

4. "Foster parents" means all adults providing out of home care to children at risk for or who have been removed from their home pursuant to article ten of the family court act. This includes kinship caregivers, relatives and non-relatives.

5. "Kinship caregiver" means a person as defined pursuant to section three hundred seventy-one of the social services law, including those persons who have not yet become a person in parental relationship but who otherwise fit the definition.

6. "Anti-bias training" means instruction on implicit bias, discrimination, cultural competency and structural inequity, including with respect to gender, race and sexual orientation, and on how these factors impact the work of the office.

§ 996-b. Office of the child welfare advocate. There is hereby established the office of the child welfare advocate in the office of children and family services. The independent review board described in section nine hundred ninety-six-h of this article shall appoint the director of the office. The director shall have expertise in the areas of child welfare, foster care, dispute resolution and system improvement, specifically in the state of New York, as evidenced by at least ten years of relevant experience in the field. A two-thirds majority vote of the independent review board shall be required to appoint or remove the director. Persons employed by the office shall have a comprehensive knowledge of the state's foster care system and expertise in the fields of child welfare, foster care, and dispute resolution, specifically in the state of New York, as evidenced by demonstrated professional and personal experience, or by academic background, the level and sufficiency of which shall be determined by the director.

§ 996-c. Duties of the office of the child welfare advocate. 1. The office shall:

(a) receive, document and respond to inquiries, grievances and complaints raised by youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents;

(b) gather information and seek resolution of inquiries, grievances, and complaints;

(c) make referrals, where appropriate, to additional information, services and resources;

(d) provide information to youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents;

(e) work with the local department of social services, voluntary agencies, foster parents, biological parents, kinship caregivers, relatives, and youth in care to resolve conflicts concerning application of applicable law, regulation and policy with regard to the provision of foster care;

(f) monitor the implementation of applicable law, regulation and policy concerning the involvement of child protective services, including but not limited to the provision of foster care through the process of receiving, documenting, tracking and responding to inquiries, grievances and complaints;

(g) recommend policies, regulations, and legislation designed to promote and improve child welfare practices, including but not limited to family-based foster care, child protective services investigations and preventative services;

(h) prepare an annual report to the legislature, which shall be publicly posted on the office's website, with aggregate data on the total number and types of concerns raised to the office, the number of parties serviced, the number of disputes resolved and responses provided, the nature of the resolution, incidents of retaliation reported by the office, the trends and issues that arose while responding to the concerns, by region, and recommendations for changes to applicable law, rules, regulations and policy concerning the provision of foster care; and

(i) present quarterly reports containing information regarding major inquiries, grievances, and complaints received by the office, and the status of the responses to such inquiries, grievances and complaints, to the independent child welfare advocate review board.

2. Nothing in this section shall permit the office to participate in any pending child welfare investigation or family court proceeding.

§ 996-d. Access to the office of the child welfare advocate. The office shall provide information to any person who contacts it, including, but not limited to:

1. foster parents and prospective foster parents;

2. biological parents;

3. kinship caregivers and prospective kinship caregivers;

4. relatives;

5. youth in care;

6. county officials; and

7. private and voluntary agencies, through mail, telephone and internet-based communication.

§ 996-e. Duties of the director. The director shall:

1. provide administrative supervision and oversight to the office;

2. establish procedures to ensure that the office services are made available to youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents;

3. participate in the policy development process of the office;

4. conduct annual anti-bias training for office of the child welfare advocate staff; and

5. oversee the preparation of the reports required under paragraphs (h) and (i) of subdivision one of section nine hundred ninety-six-c of this article.

§ 996-f. Conduct and scope of mediation and problem-solving. 1. The office shall provide relevant information about applicable law and policy, and provide a means to resolve issues among and between youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents, and also the local department of social services and the voluntary agency or private agency, when necessary.

2. The office shall develop and apply a process for receiving, documenting, fact-finding, and resolving or answering inquiries, grievances and complaints raised by youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents orally or in written form.

3. The office shall review and evaluate the effectiveness and efficiency of its own resolution procedures, and make recommendations to the

independent review board described in section nine hundred ninety-six-h of this article for the improvement of such procedures.

§ 996-g. Confidentiality of reports. Office of the child welfare advocate reports created in response to individual inquiries, grievances and complaints raised by youth, biological parents, kinship caregivers and foster parents, including prospective kinship caregivers or foster parents are confidential and shall be safeguarded from coming to the knowledge of, and from inspection or examination by, any person other than the director or members of the independent review board established pursuant to section nine hundred ninety-six-h of this article. Authorized persons receiving such reports shall not divulge information contained therein without the written consent of the director. The authorized disclosure of any such information shall not contain any individually identifiable information. No state, county or voluntary agency child welfare agents shall remove, end visitation, limit access to a child or take any other negative action against a family for seeking information or assistance from the office. No state, county or voluntary agency, shall discharge, or in any manner discriminate or retaliate against any employee who in good faith makes a complaint to the office or cooperates with the office. Nothing in this section shall prevent the office from preparing and disseminating the reports required under paragraphs (h) and (i) of subdivision one of section nine hundred ninety-six-c of this article.

§ 996-h. Child welfare advocate independent review board. 1. There is hereby established an independent child welfare advocate review board, hereby referred to as the "board". The board shall be composed of twelve board members, and shall consist of persons who are not employed by the office of children and family services. The board shall be composed of a diverse group of persons with either child welfare policy expertise or child welfare system experience. The board members shall be appointed by April first, two thousand twenty-three, as follows:

(a) The chief judge of the New York court of appeals shall appoint three board members which shall be:

(i) an individual with experience representing children in family court article ten proceedings;

(ii) an individual with experience representing parents in family court article ten proceedings; and

(iii) an individual with experience as a family court judge.

(b) The governor shall appoint three board members which shall be:

(i) a mental health professional with previous experience with child abuse and neglect cases;

(ii) an individual with experience in primary or secondary education; and

(iii) an individual with previous professional experience with a human or social services agency or a private child welfare agency.

(c) The senate shall appoint three board members which shall be:

(i) an individual who was formerly a child in the foster care system;

(ii) a current or former foster parent or adoptive parent; and

(iii) an individual with professional or volunteer experience as a court appointed special advocate.

(d) The assembly shall appoint three board members which shall be:

(i) a parent who has experienced interaction with the child welfare system;

(ii) a health care professional with previous experience with child abuse and neglect cases; and

(iii) a current or former kinship caregiver.

2. Board members shall serve for terms of three years. Board members shall be reimbursed by the office for actual and reasonable expenses incurred in the conduct of their duties. The board shall meet at least quarterly with the director, the office staff, and other appropriate officials to discuss and review reports submitted by the office. The board shall have the authority to:

(a) appoint the director of the office;

(b) meet with the director and child welfare advocate staff quarterly;

(c) review reports submitted by the office;

(d) advise the office on matters concerning complaints and grievances, dispute resolution, and recommendations for changes to applicable law, rules, regulations and policy concerning the child welfare system;

(e) evaluate the effectiveness and performance of the office and provide any necessary feedback in order to promote the improvement of the foster care system; and

(f) take steps to advise the public of the services offered by the office and promote the use of and access to the office.

§ 996-i. Access to records. In the conduct of its duties pursuant to this article, the office shall have access to all books, records, logs, reports, memoranda and any and all other materials or documents in the possession of a local department of social services, voluntary agency, a contracted preventative service provider or the office of children and family services, and facilities or programs of the office, including files maintained in the New York State Child Welfare Information System. The director, or his or her designee, may copy or make reference to any such report, document, memorandum, log entry or other material or document and, where appropriate, may include a copy in his or her report. Consistent with applicable laws and regulations, the confidentiality of records and documents obtained by the office shall be maintained by the office.

§ 2. This act shall take effect January 1, 2023.