

# STATE OF NEW YORK

6351

2023-2024 Regular Sessions

## IN ASSEMBLY

April 5, 2023

Introduced by M. of A. CLARK -- read once and referred to the Committee on Children and Families

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:

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

### ARTICLE 49-C

#### OFFICE OF THE CHILD WELFARE ADVOCATE

##### Section 996. Purpose.

6 996-a. Definitions.

7 996-b. Office of the child welfare advocate.

8 996-c. Duties of the office of the child welfare advocate.

9 996-d. Access to the office of the child welfare advocate.

10 996-e. Duties of the director.

11 996-f. Conduct and scope of mediation and problem-solving.

12 996-g. Confidentiality of reports.

13 996-h. Child welfare advocate independent review board.

14 996-i. Access to records.

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

23 § 996-a. Definitions. As used in this article:

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

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

LBD07653-01-3

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

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

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

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

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

16 § 996-b. Office of the child welfare advocate. There is hereby estab-  
17 lished the office of the child welfare advocate in the office of chil-  
18 dren and family services. The independent review board described in  
19 section nine hundred ninety-six-h of this article shall appoint the  
20 director of the office. The director shall have expertise in the areas  
21 of child welfare, foster care, dispute resolution and system improve-  
22 ment, specifically in the state of New York, as evidenced by at least  
23 ten years of relevant experience in the field. A two-thirds majority  
24 vote of the independent review board shall be required to appoint or  
25 remove the director. Persons employed by the office shall have a  
26 comprehensive knowledge of the state's foster care system and expertise  
27 in the fields of child welfare, foster care, and dispute resolution,  
28 specifically in the state of New York, as evidenced by demonstrated  
29 professional and personal experience, or by academic background, the  
30 level and sufficiency of which shall be determined by the director.

31 § 996-c. Duties of the office of the child welfare advocate. 1. The  
32 office shall:

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

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

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

41 (d) provide information to youth, biological parents, kinship caregiv-  
42 ers and foster parents, including prospective kinship caregivers or  
43 foster parents;

44 (e) work with the local department of social services, voluntary agen-  
45 cies, foster parents, biological parents, kinship caregivers, relatives,  
46 and youth in care to resolve conflicts concerning application of appli-  
47 cable law, regulation and policy with regard to the provision of foster  
48 care;

49 (f) monitor the implementation of applicable law, regulation and poli-  
50 cy concerning the involvement of child protective services, including  
51 but not limited to the provision of foster care through the process of  
52 receiving, documenting, tracking and responding to inquiries, grievances  
53 and complaints;

54 (g) recommend policies, regulations, and legislation designed to  
55 promote and improve child welfare practices, including but not limited

1 to family-based foster care, child protective services investigations  
2 and preventative services;

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

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

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

18 § 996-d. Access to the office of the child welfare advocate. The  
19 office shall provide information to any person who contacts it, includ-  
20 ing, but not limited to:

21 1. foster parents and prospective foster parents;

22 2. biological parents;

23 3. kinship caregivers and prospective kinship caregivers;

24 4. relatives;

25 5. youth in care;

26 6. county officials; and

27 7. private and voluntary agencies, through mail, telephone and inter-  
28 net-based communication.

29 § 996-e. Duties of the director. The director shall:

30 1. provide administrative supervision and oversight to the office;

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

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

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

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

40 § 996-f. Conduct and scope of mediation and problem-solving. 1. The  
41 office shall provide relevant information about applicable law and poli-  
42 cy, and provide a means to resolve issues among and between youth,  
43 biological parents, kinship caregivers and foster parents, including  
44 prospective kinship caregivers or foster parents, and also the local  
45 department of social services and the voluntary agency or private agen-  
46 cy, when necessary.

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

52 3. The office shall review and evaluate the effectiveness and effi-  
53 ciency of its own resolution procedures, and make recommendations to the  
54 independent review board described in section nine hundred ninety-six-h  
55 of this article for the improvement of such procedures.

1 § 996-g. Confidentiality of reports. Office of the child welfare  
2 advocate reports created in response to individual inquiries, grievances  
3 and complaints raised by youth, biological parents, kinship caregivers  
4 and foster parents, including prospective kinship caregivers or foster  
5 parents are confidential and shall be safeguarded from coming to the  
6 knowledge of, and from inspection or examination by, any person other  
7 than the director or members of the independent review board established  
8 pursuant to section nine hundred ninety-six-h of this article. Author-  
9 ized persons receiving such reports shall not divulge information  
10 contained therein without the written consent of the director. The  
11 authorized disclosure of any such information shall not contain any  
12 individually identifiable information. No state, county or voluntary  
13 agency child welfare agents shall remove, end visitation, limit access  
14 to a child or take any other negative action against a family for seek-  
15 ing information or assistance from the office. No state, county or  
16 voluntary agency, shall discharge, or in any manner discriminate or  
17 retaliate against any employee who in good faith makes a complaint to  
18 the office or cooperates with the office. Nothing in this section shall  
19 prevent the office from preparing and disseminating the reports required  
20 under paragraphs (h) and (i) of subdivision one of section nine hundred  
21 ninety-six-c of this article.

22 § 996-h. Child welfare advocate independent review board. 1. There is  
23 hereby established an independent child welfare advocate review board,  
24 hereby referred to as the "board". The board shall be composed of twelve  
25 board members, and shall consist of persons who are not employed by the  
26 office of children and family services. The board shall be composed of  
27 a diverse group of persons with either child welfare policy expertise or  
28 child welfare system experience. The board members shall be appointed by  
29 April first, two thousand twenty-five, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (iii) a current or former kinship caregiver.

55 2. Board members shall serve for terms of three years. Board members  
56 shall be reimbursed by the office for actual and reasonable expenses

1 incurred in the conduct of their duties. The board shall meet at least  
2 quarterly with the director, the office staff, and other appropriate  
3 officials to discuss and review reports submitted by the office. The  
4 board shall have the authority to:

5 (a) appoint the director of the office;

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

7 (c) review reports submitted by the office;

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

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

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

16 § 996-i. Access to records. In the conduct of its duties pursuant to  
17 this article, the office shall have access to all books, records, logs,  
18 reports, memoranda and any and all other materials or documents in the  
19 possession of a local department of social services, voluntary agency, a  
20 contracted preventative service provider or the office of children and  
21 family services, and facilities or programs of the office, including  
22 files maintained in the New York State Child Welfare Information System.  
23 The director, or his or her designee, may copy or make reference to any  
24 such report, document, memorandum, log entry or other material or docu-  
25 ment and, where appropriate, may include a copy in his or her report.  
26 Consistent with applicable laws and regulations, the confidentiality of  
27 records and documents obtained by the office shall be maintained by the  
28 office.

29 § 2. This act shall take effect January 1, 2025.