§ 427-a. Differential response programs for child protection assessments or investigations. 1. Any social services district may, upon the authorization of the office of children and family services, establish a program that implements differential responses to reports of child abuse and maltreatment. Such programs shall create a family assessment and services track as an alternative means of addressing certain matters otherwise investigated as allegations of child abuse or maltreatment pursuant to this title. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply only to those cases involving allegations of abuse or maltreatment in family settings expressly included in the family assessment and services track of the differential response program, and only in those social services districts authorized by the office of children and family services to implement a differential response program. Such cases shall not be subject to the requirements otherwise applicable to cases reported to the statewide central register of child abuse and maltreatment pursuant to this title, except as set forth in this section.

2. Any social services district interested in implementing a differential response program shall apply to the office of children and family services for permission to participate. The criteria for a social services district to participate will be determined by the office of children and family services after consultation with the office for the prevention of domestic violence, however the social services district's application must include a plan setting forth the following:

(a) in conjunction with any additional requirements imposed by the office of children and family services and the provisions of this subdivision, the factors to be considered by the social services district in determining which cases will be addressed through the family assessment and services track and the size of the population to be the subject of the differential response program;

(b) the types of services and interventions to be provided to families included in the family assessment and services track and a description of how the services will be offered;

(c) a description of the process to be followed for planning and monitoring the services provided under the family assessment and services track;

(d) a description of how the principles of family involvement and support consistent with maintaining the safety of the child will be implemented in the family assessment and services track;

(e) a description of how the differential response program will enhance the ability of the district to protect children, maintain the safety of children and preserve families;

(f) a description of how the district will reduce the involvement of government agencies with families and maintain the safety of children through the use of community resources;

(g) a description of the staff resources proposed to be used in the family assessment and services track, including the proposed staff workloads and qualifications;

(h) a description of the training that will be provided to district and any non-district staff to be used in the differential response program including, but not limited to, a description of the training involving maintaining the safety and well-being of children and any cross training planned for family assessment and investigative staff;

(i) a description of the community resources that are proposed to be used in the family assessment and services track;

(j) a description of any additional funding that may be utilized to enhance the differential response program; and

(k) a description of the protocol to be followed for handling cases where domestic violence is present in order to maintain the safety of the child through the family assessment and services track.

3. The criteria for determining which cases may be placed in the assessment track shall be determined by the local department of social services, in conjunction with the office of children and family services and after consultation with the office for the prevention of domestic violence. Provided, however, that reports including any of the following allegations shall not be included in the assessment track of a differential response program:

(a) reports alleging that the subject committed or allowed to be committed an offense defined in article one hundred thirty of the penal law;

(b) reports alleging that the subject allowed, permitted or encouraged a child to engage in any act described in sections 230.25, 230.30 and

230.32 of the penal law;

(c) reports alleging that the subject committed any of the acts described in section 255.25, 255.26 or 255.27 of the penal law;

(d) reports alleging that the subject allowed a child to engage in acts or conduct described in article two hundred sixty-three of the penal law;

(e) reports alleging that the subject committed assault in the first, second or third degree against a child;

(f) reports alleging that the subject committed or attempted to commit murder or manslaughter in the first or second degree;

(g) reports alleging that the subject abandoned a child pursuant to subdivision five of section three hundred eighty-four-b of this article;

(h) reports alleging that the subject has subjected a child to severe or repeated abuse as those terms are defined in paragraphs (a) and (b) of subdivision eight of section three hundred eighty-four-b of this article; and

(i) reports alleging that the subject has neglected a child so as to substantially endanger the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect.

4. The following procedures shall be followed for all cases included in the family assessment and services track:

(a) Reports taken at the statewide central register of child abuse and maltreatment shall be transmitted to the appropriate local child protective service.

(b) A social services district permitted by the office of children and family services to participate in the implementation of a differential response program shall, consistent with the criteria developed pursuant to subdivision three of this section, identify those reports which are initially eligible to be included in the family assessment and services track.

(c) For those reports which are included in the family assessment and services track, the social services district shall not be subject to the requirements of this title concerning initial investigation of reports of suspected abuse and maltreatment of children, including notification requirements. For reports assigned to the family assessment and services

track, the social services district shall be responsible for ensuring that the children are safe in their homes. Such safety assessment shall be commenced within twenty-four hours of receipt of the report and completed within seven days. Based on the initial safety assessment, the district shall determine if the report shall continue under the family assessment and services track. This safety assessment must be documented in the manner specified by the office of children and family services. Should the children be found to be safe in the home, the social services district shall then identify service needs and family issues, if any, that should be addressed.

(i) Where the social services district determines, based on the initial safety assessment, that the report is appropriate to be included in the family assessment and services track, the social services district shall document the reason for that determination in the initial safety assessment and inform the statewide central register of child abuse and maltreatment that the report is part of the family assessment and services track and request that the records of the statewide central register of child abuse and maltreatment of such report be classified as an assessment track case and be legally sealed. Such sealed reports shall be maintained at the statewide central register of child abuse and maltreatment for ten years after the report was made. Access to reports assigned to, and records created under the family assessment and services track and information concerning such reports and records is governed by paragraph (d) of subdivision five of this section.

(ii) Where the social services district determines, based on the initial safety assessment, to investigate the report as a report of suspected child abuse or maltreatment, the social services district shall document the reason for that decision in the initial safety assessment. Where the social services district makes the determination to investigate the report, all of the requirements of this title concerning investigations of reports of suspected child abuse and maltreatment shall apply, including the notification requirements. The report shall no longer be eligible to be included in the family assessment and services track.

(d) Where the social services district has determined that a case is appropriate to be included in the family assessment and services track, the district's activities shall include, at a minimum, the following:

(i) the provision of written notice to each parent, guardian or other person legally responsible for the child or children participating in the family assessment and services track explaining that it is the intent of the social services district to meet the needs of the family without engaging in a traditional child protective services investigation. The notice shall also explain that the workers assisting the family in the family assessment and services track are mandated reporters who are required to report suspected child abuse or maltreatment and that those workers are required to report new information that they receive in their work with the family if that information gives them reasonable cause to suspect that a child in the family is an abused or maltreated child;

(ii) an examination, with the family, of the family's strengths, concerns and needs;

(iii) where appropriate, an offer of assistance which shall include case management that is supportive of family stabilization;

(iv) the planning and provision of services responsive to the service needs of the family; and

(v) an on-going joint evaluation and assessment of the family's progress including ongoing, periodic assessments of risk to the child.

(e) After the social services district has received a report of suspected maltreatment and determined that the report is initially eligible to be included in the family assessment and services track, pursuant to paragraph (b) of this subdivision, the activities described in paragraphs (c) and (d) of this subdivision may be performed by the social services district directly or through any other method currently utilized by social services districts to obtain preventive services for children and families. If a community-based agency determines, pursuant to subparagraph (ii) of paragraph (c) of this subdivision, that a report must be investigated as a case of suspected child abuse or maltreatment, the community-based agency shall so inform the social services district, which shall then become responsible for conducting the child protective services investigation in accordance with the requirements of this title.

(f) A report selected for inclusion in the demonstration project shall cease to be eligible for inclusion in the demonstration project if at any time in the course of providing services the district or

community-based agency finds that:

(i) there is evidence of child abuse, including sexual abuse; or

(ii) the parent or parents refuse to cooperate with the district or community-based agency in developing or implementing a plan to address the family problems or issues and there is evidence of maltreatment of a child.

(g) Where the district finds or is advised by a community-based agency, subsequent to the completion of the initial safety assessment and after the report is legally sealed, that the report is no longer eligible for inclusion in the demonstration project pursuant to paragraph (f) of this subdivision, the district shall contact the statewide central register of child abuse and maltreatment and make a new report of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this title.

(h) Where a report has been included in the family assessment and services track and a subsequent report involving the family is made to the statewide central register of child abuse and maltreatment, and such subsequent report is not eligible for inclusion in the family assessment and services track, the local child protective services, in conducting its investigation, shall work cooperatively with any district or community-based agency staff that are already working with the family to minimize to the extent practicable the chance that existing services being provided to the family will be disrupted and to maximize to the extent practicable the coordination of the existing services being provided to the family with any new services to be provided to the family.

5. (a) Cases included in the family assessment and services track shall not be subject to the requirements of section four hundred nine-e or four hundred nine-f of this article.

(b) All records created as part of the family assessment and services track shall include, but not be limited to, documentation of the initial safety assessment, the examination of the family's strengths, concerns and needs, all services offered and accepted by the family, the plan for supportive services for the family, all evaluations and assessments of the family's progress, and all periodic risk assessments.

(c) Records created under the family assessment and services track

shall be maintained for ten years after the report initiating the case at the statewide central register was made.

(d) All reports assigned to, and records created under, the family assessment and services track, including but not limited to reports made or written as well as any other information obtained or photographs taken concerning such reports or records shall be confidential and shall be made available only to:

(i) staff of the office of children and family services and persons designated by the office of children and family services;

(ii) the social services district responsible for the family assessment and services track case;

(iii) community-based agencies that have contracts with the social services district to carry out activities for the district under the family assessment and services track;

(iv) providers of services under the family assessment and services track;

(v) any social services district investigating a subsequent report of abuse or maltreatment involving the same subject or the same child or children named in the report;

(vi) a court, but only while the family is receiving services provided under the family assessment and services track and only pursuant to a court order or judicial subpoena, issued after notice and an opportunity for the subject of the report and all parties to the present proceeding to be heard, based on a judicial finding that such reports, records, and any information concerning such reports and records, are necessary for the determination of an issue before the court. Such reports, records and information to be disclosed pursuant to a judicial subpoena shall be submitted to the court for inspection and for such directions as may be necessary to protect confidentiality, including but not limited to redaction of portions of the reports, records, and information and to determine any further limits on redisclosure in addition to the limitations provided for in this title. A court shall not have access to the sealed family assessment and services reports, records, and any information concerning such reports and records, after the conclusion of services provided under the family assessment and services track; and

(vii) the subject of the report included in the records of the family assessment and services track.

(e) Persons given access to sealed reports, records, and any information concerning such reports and records, pursuant to paragraph (d) of this subdivision shall not redisclose such reports, records and information except as follows:

(i) the office of children and family services and social services districts may disclose aggregate, non-client identifiable information;

(ii) social services districts, community-based agencies that have contracts with a social services district to carry out activities for the district under the family assessment and services track, and providers of services under the family assessment and services track, may exchange such reports, records and information concerning such reports and records as necessary to carry out activities and services related to the same person or persons addressed in the records of a family assessment and services track case;

(iii) the child protective service of a social services district may unseal a report, record and information concerning such report and record of a case under the family assessment and services track in the event such report, record or information is relevant to a subsequent report of suspected child abuse or maltreatment. Information from such an unsealed report or record that is relevant to the subsequent report of suspected child abuse and maltreatment may be used by the child protective service for purposes of investigation and family court action concerning the subsequent report and may be included in the record of the investigation of the subsequent report. If the social services district initiates a proceeding under article ten of the family court act in connection with such a subsequent report of suspected child abuse and maltreatment and there is information in the report or record of a previous case under the family assessment and services track that is relevant to the proceeding, the social services district shall include such information in the record of the investigation of the subsequent report of suspected child abuse or maltreatment and shall make that information available to the family court and the other parties for use in such proceeding provided, however, that the information included from the previous case under the family assessment and services track shall then be subject to all laws and regulations regarding confidentiality that apply to the record of the investigation of such subsequent report of suspected child abuse or maltreatment. The family court may consider

the information from the previous case under the family assessment and services track that is relevant to such proceeding in making any determinations in the proceeding; and

(iv) a subject of the report may, at his or her discretion, present a report, records and information concerning such report and records from the family assessment and services track case, in whole or in part, in any proceeding under article ten of the family court act in which the subject is a respondent. A subject of the report also may, at his or her discretion, present a report, records and information concerning such report and records from the family assessment and services track, in whole or in part, in any proceeding involving the custody of, or visitation with the subject's children, or in any other relevant proceeding. In making any determination in such a proceeding, the court may consider any portion of the family assessment and service track report, records and any information concerning such report and records presented by the subject of the report that is relevant to the proceeding. Nothing in this subparagraph, however, shall be interpreted to authorize a court to order the subject to produce such report, records or information concerning such report and records, in whole or in part.

6. Expenditures by a social services district pursuant to this section shall be reimbursable from the annual appropriations available for social services district expenditures for child welfare services which shall include, but not be limited to, preventive services provided pursuant to section four hundred nine-a of this article, child protective services, independent living services and any other appropriation made specifically to support these differential response programs. Nothing shall preclude a social services district from seeking private funds for support of their differential response programs.

7. The office of children and family services shall post the plan contained in any application approved for implementation of a differential response program on the office of children and family services website within sixty days of such approval.

8. The office of children and family services shall report on the

differential response programs established pursuant to this section as part of the annual report required pursuant to section four hundred twenty-six of this title.