

Division of Child Care Services
P O L I C Y S T A T E M E N T

ID NUMBER: 09-2

TOPIC: Recognition of Legal Same-Sex Marriages

TYPES OF CHILD DAY CARE IMPACTED: All Modalities

CONTACT: <http://www.ocfs.state.ny.us/main/beccs/regionaloffices.asp>

EFFECTIVE: Immediately 3-20-09

The purpose of this Policy Statement is to advise child care providers of the implications of the February 1, 2008 decision of the New York State Supreme Court, Appellate Division, Fourth Department, *Martinez v. County of Monroe*, 50 A.D.3d 189 (4th Dep't 2008). The Court held that same-sex marriages legally performed in other jurisdictions are "entitled to recognition in New York in the absence of express legislation to the contrary" (*Martinez*, 50 A.D.3d at 193).

The *Martinez* decision is consistent with other State court decisions such as *Godfrey v. Spano*, 15 Misc. 3d 809 (Sup. Ct. Westchester County 2007) and *Funderburke v. N.Y. State Dep't of Civil Service*, 49 A.D.3d 809 (2d Dep't 2008). In addition, the extension of such recognition is also consistent with State policy. For example, in April 2007, the Department of Civil Service extended recognition to same-sex spouses in legal marriages from other jurisdictions for purposes of spousal benefits under the New York State Health Insurance Program.

Accordingly, the Governor's Office has required State agencies to review their policies and interpretations of relevant statutes and regulations, and construe marriage-related terms in a manner that recognizes legal same-sex marriages, unless prohibited by another provision of law.

Various provisions of the Domestic Relations Law (DRL), Family Court Act (FCA), Social Services Law (SSL), and regulations of the Commissioner of the Office of Children and Family Services (OCFS) contain words such as marriage, married, spouse, husband and wife. Such statutory and regulatory language must be interpreted to include legal same-sex marriages and spouses, as appropriate. Currently, same-sex marriages are legally performed in Canada, South Africa, Spain, Belgium, the Netherlands, Connecticut, and Massachusetts. Same-sex marriages were legally performed in California from May 15, 2008 until November 4, 2008.

There are numerous statutory and regulatory provisions that refer to a person's marital status and use gender-specific words for parents and spouses. These provisions must be interpreted to recognize both spouses in same-sex marriages legally performed in another country or state. Additionally, current OCFS policies must be interpreted to recognize same-sex marriages legally performed in other jurisdictions.

For example, when obtaining written permission from the child's parent to administer medication, either parent in a legal same-sex marriage may provide such permission. Additionally, a child may be released from a day care program to either parent in a legal same-sex marriage.

Approved [X] Date: 3-20-09



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