

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM
Commissioner



[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 80 ADM-65
[Services]

TO: Commissioners of Social Services

SUBJECT: Termination or Limitation of Parental Visitation Rights by an Authorized Agency DATE: August 25, 1980

SUGGESTED DISTRIBUTION: Commissioner
Director of Services
All Child Welfare Staff
All Authorized Foster Care Agencies

CONTACT PERSON: Any questions concerning this release should be directed to Edmund Cox, Foster Care Specialist, Regional Coordination and Support, Office of Family and Children's Services Operations by calling 1-800-342-3715, extension 4-9420.

I. PURPOSE

The purpose of this directive is to give notice to local districts and authorized agencies of an addition to the Department's regulation 431 regarding the termination or limitation of parental visitation rights to children voluntarily placed in foster care.

II. BACKGROUND

Experience has shown that the Department's regulation on terminating or limiting the right of a parent, parents, or guardian to visit a child in foster care was not sufficient in its application to voluntary foster care placements.

While Section 384-a (2)(b) of the Social Services Law set terms by which visitation could be terminated or limited, Department regulation 431.9 (d) referred only to situations where termination of all parental rights was contemplated, gave authority only to a social services official to initiate such action and did not really make explicit the means by which denial or limitation of visitation rights could be sought. As a result, the Department has been subject to inquiries and even litigation regarding terminations

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		431.9 (d) 431.13	SSL 384-a SSL 384-b SSL 392 FCA Article 10 SSL 417		

and limitations of parental visitations, particularly those which have not been initiated by a local social services official. In order to preclude further incidents of this nature, the Department promulgated, effective January 23, 1979, an additional regulation 431.13:

431.13 Termination or limitation of visitation rights by an authorized agency. (Additional Statutory authority: Social Services Law, § 384-a) When an authorized agency determines to terminate or limit parental visiting rights between a parent or guardian and his child voluntarily placed in foster care, the following shall govern:

- (a) Except as otherwise authorized herein, parental visitation shall not be terminated or limited by a social services official having care and custody of the child or by another authorized agency acting on his behalf except by court order in a proceeding in which the parent or guardian was a party.
- (b) Visitation is to continue until such a court order is obtained except in cases of imminent danger to the child's life, health and safety.
- (c) In cases of imminent danger to the child's life, health and safety, the authorized agency may terminate or limit visitation. On the same day visitation is terminated or limited, the authorized agency shall notify a designated employee of a city or county department of social services of such termination or limitation. Upon termination or limitation of visitation, the authorized agency shall commence a court action or, if an action is already before the court, shall seek an order as if the child had been taken into protective custody pursuant to Section 417 of the Social Services Law.
- (d) The above do not apply if the parent or guardian agrees in writing to the termination or limitation of visiting, such agreement to be made in accordance with Subdivision 3 of Section 384-a of the Social Services Law.

Although the regulation has been in effect, it is clear that additional clarification and direction regarding implementation of the regulation will be helpful to districts and agencies.

III PROGRAM IMPLICATIONS

When a child is placed in foster care, particularly when the placement is voluntary, the local district and/or the authorized agency providing care to the child has an obligation to strengthen parental ties with the child. An especially crucial and essential tool in this process is visitation between parent and child. Since visitation is so crucial, parental visitation should not be terminated nor even limited except for the most compelling reasons. Some examples of such reasons are:

- physical abuse of a child at a visit;
- psychological abuse of a child at a visit;
- a visit by a parent who is intoxicated or under the influence of drugs;
- a serious detrimental effect on the child after a visit.

Even in such situations, however, limiting or terminating a parent's or guardian's visitation rights is a serious intervention, second only to the actual termination of parental rights and the severance of the parent-child relationship. Because of the seriousness of these interventions, the Department has established regulatory procedures requiring specific steps to be taken by authorized agencies in order to limit or terminate parental visitation to children in care.

The regulation is very explicit in its requirements regarding termination or limitation of visitation rights between a parent or guardian and a child voluntarily placed in foster care, where the foster care agreement provides for visitation by the parent or guardian. Unless the parent or guardian subsequently agrees, in writing, to voluntarily terminate or limit visitation, or unless there is imminent danger to the child's life, health and safety, parental visitation may not be limited or terminated by either a social services official or by an authorized agency caring for a child on its own or a social services official's behalf except by court order. Until such a court order is obtained, visitation by the parent or guardian must be allowed to continue.

Only in cases where an agency or social services official must act to terminate or limit parental visitation in order to prevent imminent danger to the child's life, health and safety may such agency or official act prior to obtaining a court order. Moreover, termination or limitation by an agency or social services official under the "imminent danger" provisions shall be treated the same as a protective removal made under Section 417.2 of the Social Services Law, which requires the notification of the local child protective service and a filing of an Article 10 proceeding on the next court day. For those persons desiring further guidance as to "imminent danger", they may wish to consult the Practice Commentary associated with Section 1024 of the Family Court Act, published by McKinney's.

The regulation and this directive apply only to those parents and guardians whose children are placed voluntarily in foster care. Those children who are placed by the court or who have been removed from their homes pursuant to Section 417 of Social Services Law and/or Article 10 of the Family Court Act already have court ordered provisions relating to parental visitation and are therefore already subject to a requirement for court review prior to any change in visitation. Sections 1062 et seq. of the Family Court Act set out procedures to be used in seeking the modification of an Article 10 court order. However, the emergency removal provisions of Article 10 of the Family Court Act and Section 417 of the Social Services Law are also applicable in these cases, based on the same "imminent danger" provisions as contained in this directive.

IV. REQUIRED ACTIONS

Social services commissioners shall give this directive wide distribution to all child welfare workers within their districts and to all authorized agencies which care for children in foster care.

Each local social services commissioner shall designate an employee of the district to receive notifications from authorized agencies of an agency's decision to limit or terminate parental supervision. Because such decisions may be treated as if the child is taken into protective custody pursuant to Section 417 of Social Services Law, the designated employee shall be a caseworker or supervisor in the local child protective service. The name of the designated employee shall be communicated to the director of each authorized agency caring for children from the district. Authorized agencies reporting limitations or visitations pursuant to this directive shall make such reports only to the district employee so designated or to the local commissioner.

Except when an authorized agency must immediately limit or terminate visitation rights in order to prevent imminent danger to the child's life, health and safety, an authorized agency must obtain either the written agreement of the parent or guardian or a court order before making any change in visitation rights. Clearly, it will be preferable for the agency and parent or guardian to reach a mutual agreement and a written change to visitation rights. However, in those situations where this is not possible and the agency has made a determination that it must seek a limitation or termination of visitation rights, the agency must commence a court proceeding according to Article 10 of the Family Court Act. The parent or guardian whose rights would be limited or terminated by this action must be made a party to the proceeding. The local social services commissioner having custody of the child should also be a party. In those situations where there is no imminent danger to the child's life, health and safety, the authorized agency must continue to allow visitation until the court proceeding has been completed and an order regarding visitation rights has been issued.

When an authorized agency must immediately limit or terminate visitation rights in order to prevent imminent danger to the child's life, health and safety, the authorized agency shall on that same day notify the designated employee of the local social services district having responsibility for the child. The agency shall also initiate a petition in accordance with Article 10 of the Family Court Act.

This petition must be brought before the Family Court on the next regular work day session of the court following the agency's limitation or termination of visitation under the "imminent danger" provision. Because of the special provisions of Article 10, the authorized agency will need to seek the assistance of the local child protective service in placing the petition before the court. The local child protective service is directed to provide such assistance, which may require the filing of the Article 10 proceeding on behalf of the authorized agency, depending on the rule and policy of the local Family Court.

Each social services district and each authorized agency caring for children shall review its policy and practice regarding limitation or termination of visitation rights to ensure that they are in compliance with the provisions of Regulation 431.13 and this Directive. Each district and each agency must insure that all staff who deal with parents or guardians in visits to children are aware that, prior to obtaining a parent's or guardian's written consent or a court order, no action to terminate or limit parental visitation may be taken except in a circumstance occasioned by imminent danger to the child's life, health and safety. Even in such a case, a petition for court review of that action must be brought before the Family Court at its next workday session following such action. In any action by the authorized agency to terminate or limit parental visitation, the local social services commissioner and/or the designated employee of the local district having custody of the child shall be notified, the same day, when action is taken to prevent imminent danger and as soon as possible in all other cases, but at least at the time a petition is filed seeking a court order to limit or terminate parental visitation. As a practice, same day notification would appear the most effective policy for agencies to adopt in all cases involving limitation or termination of parental visitation rights.


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Deputy Commissioner
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