

Adoption Definitions
 SSA 473(c)
 SSL § 451
 18 NYCRR 421.24(a)(1)(2) and (3)

The federal definition of a child “with special needs,” Section 473(c) of the SSA, is as follows:

- (1) The State has determined that the child cannot or should not be returned to the home of his/her parents; and
- (2) The State has first determined (a) that there exists with respect to the child a specific factor or condition (which may include but is not limited to ethnic background, age or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such a child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX, and (b) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as foster child (exception also extends to other circumstances that are not in the child’s best interests, as well as adoption by a relative), a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX.”

New York State definitions [see Section 451 of the Social Services Law and 18 NYCRR 421.24(a)] are as follows:

- (1) *Child* means a person under the age of 21 years whose guardianship and custody have been committed to a social services official or a voluntary authorized agency, or whose guardianship and custody have been committed to a certified or approved foster parent pursuant to a court order prior to such person's 18th birthday or a person under the age of 21 whose care and custody have been transferred prior to such person's 18th birthday to a social services official or a voluntary authorized agency pursuant to section 1055 of the Family Court Act or section 384-a of the Social Services Law, whose parents are deceased or where one parent is deceased and the other parent is not a person entitled to notice of an adoption pursuant to sections 111 and 111-a of the domestic Relations Law, and where such official or agency consents to the adoption of such person in accordance with section 113 of the Domestic Relations Law.
- (2) *Handicapped* child means a child who possesses a specific physical, mental or emotional condition or disability of such severity or kind which, in the opinion of the department, would constitute a significant obstacle to the child's adoption. Such conditions include, but are not limited to:
 - (i) any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
 - (ii) any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes or may be expected to make a

child totally or partially incapacitated for education or for remunerative occupation, as described in sections 1002 and 4001 of the Education Law; or makes or may be expected to make a child handicapped, as described in section 2581 of the Public Health Law;

(iii) any substantial disfigurement, such as the loss or deformation of facial features, torso or extremities; or

(iv) a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability.

(3) *Hard-to-place* child means a child, other than a handicapped child:

(i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or

(ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or the voluntary authorized agency; or

(iii) who meets any of the conditions listed in clauses (a) through (f) of this subparagraph, which the department has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or the voluntary authorized agency for less than six months:

(a) the child is one of a group of two siblings (including half- siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this part; and

(1) at least one of the children is five years old or older; or

(2) at least one of the children is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) at least one of the children is otherwise eligible for subsidy in accordance with the provisions of this subdivision:

(b) the child is the sibling or half-sibling of a child already adopted and it is considered necessary that such children be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and

(1) the child to be adopted is five years old or older; or

(2) the child is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(3) the sibling or half-sibling already adopted is eligible for subsidy or would have been eligible for subsidy if application had been made at the time of or prior to the adoption;

(c) the child is one of a group of three or more siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; or

(d) the child is eight years old or older and is a member of a minority group which is substantially overrepresented in New York State foster care in relation to the percentage of that group to the State's total population; or

(e) the child is 10 years old or older; or

(f) the child is hard to place with parents other than his/her present foster parents because he/she has been in care with the same foster parents for 12 months or more prior to the signing of the adoption placement agreement by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in such care and separation from the foster parent(s) would adversely affect the child's development.