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 | ADMINISTRATIVE DIRECTIVE |  
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TO: Commissioners of  
 Social Services  
 Directors of Voluntary  
 Child Caring Agencies

DIVISION: Family and  
 Children  
 Services

DATE: June 8, 1992

SUBJECT: Foster Care, Adoption: Requirements for Siblings Placement,  
 Visitation and Communication

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 SUGGESTED

DISTRIBUTION: Directors of Services  
 Children's Services Staff  
 Legal Staff  
 Staff Development Coordinators

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ATTACHMENTS: There are no attachments to this release.

FILING REFERENCES

| Previous<br>ADMs/INFs | Releases<br>Cancelled | Dept. Regs. | Soc. Serv.<br>Law & Other<br>Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
|                       |                       | 421.2       | SSL 358-a                               | Adoption    |            |
|                       |                       | 421.15      | SSL 384-a                               | Manual      |            |
|                       |                       | 421.18      | FCA 027-a                               |             |            |
|                       |                       | 421.19      | FCA 1055                                | Standard    |            |
|                       |                       | 428.6       |   | of          |            |
|                       |                       | 430.11      |   | Payments    |            |
|                       |                       | 431.10      |   | for         |            |
|                       |                       | 444.5       |   | Foster      |            |
|                       |                       | 444.8       |   | Care        |            |

I. PURPOSE

The purpose of this directive is to inform you of requirements in Chapter 854 of the Laws of 1990 for placement of siblings and half-siblings together in foster care homes or facilities and in adoptive homes unless such placement would be contrary to the health, safety or welfare of one or more of the children. This directive also includes information on Department regulations which became effective on July 26, 1988, regarding placement of siblings together, and on amendments made to those regulations, effective September 25, 1991, to comply with the 1990 statute.

The directive also describes the requirement for authorized agencies\* to facilitate regular visitation and communication among siblings who are separated. The term "siblings," as used in this directive, assumes the inclusion of "half-siblings"; i.e., children who have one parent in common.

Sections 358-a and 384-a of Social Services Law and Sections 1027-a and 1055 of the Family Court Act are amended by Chapter 854.

II. BACKGROUND

Following passage of the Child Welfare Reform Act of 1979, permanency planning for children entering foster care became the paramount objective. In placing a child, continuity of environment and least restrictive setting became primary considerations. Visitation and contact with the birth family were considered essential for the majority of children who had a permanency goal of return home. However, siblings entering foster care or adoptive homes were often placed as individuals. Until recently, even social research and literature on families at risk frequently failed to consider the need to maintain sibling relationships. In fact, some psychological studies focused on "sibling rivalry" and competition rather than sibling bonding and support. Some writers even advocated separation of siblings to reduce interdependence or rivalry.

Beginning in the mid-eighties, significant societal changes and litigation brought new focus to the issue of sibling separation. Court cases dealing with complex custody decisions in divorce cases and the increasing numbers of adopted children seeking contact with their birth families have raised awareness of the importance of maintaining sibling connections.

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\*The term "authorized agencies" includes both social services districts and voluntary child caring agencies (see 18 NYCRR 441.2(d)).

In July 1988 the Department promulgated regulations requiring that siblings must not be separated unnecessarily in foster care or adoptive placements. Social services districts were required to place siblings together unless the district determined, in consultation with other social services or health professionals, that such placements would be detrimental to the best interests of one or more of the children. In the list of several factors to be considered in the assessment of "best interests" in placing siblings together was the availability of foster and adoptive parents willing to accept siblings, a condition that has now been removed in response to the new law. The 1988 regulations also required foster parents to be informed that diligent efforts would be made to facilitate biweekly contact between siblings who are separated.

By enacting Chapter 854 of the Laws of 1990, the New York State Legislature generally supported Department policy and regulations already in effect regarding siblings entering foster care. However, the new statutory language went beyond the regulations then in place to strengthen the basic policy, requiring that siblings entering foster care must be placed together unless such placement would be "contrary to the child's health, safety or welfare." Chapter 854 also gives the social services district responsibility to provide or arrange for regular visitation and communication between siblings who are separated when such contact is in the best interests of the children. Chapter 854 adds that such placement, visitation and communication is "presumptively in the child's best interests unless such would be contrary to the child's health, safety or welfare." The Department revised its regulations on the placement of and contact between siblings to incorporate the statutory requirements in Chapter 854.

### III. PROGRAM IMPLICATIONS

In implementing Chapter 854 and Department regulations governing placement of siblings together in foster or adoptive homes, social services districts are expected to begin with children currently entering foster care. Nothing in the law or regulations requires retroactive application of the new requirements or disruption of placements when such disruptions would adversely affect the siblings in care. It is not the intent of the Department to require rearrangement of placements made in the past UNLESS such changes would be in the best interests of the children involved. However, agencies are encouraged to review cases of previously-separated siblings to ensure that the best interests of the children are being followed in continuing their separation. Required service plan reviews and planning conferences provide opportunities for such reassessments.

Effective immediately, siblings entering foster care cannot be placed separately without a documented assessment in the uniform case record indicating why placement together would be contrary to the health, safety or welfare of one or more of the children. The requirements for consultation and assessment included in section 431.10 of Department regulations are expected to ensure that siblings will generally be

placed together in the same home or facility unless there is good cause to do otherwise. The requirement for placement together is applicable whether siblings enter care at the same time or at different points in time. The requirement also extends to placement of siblings together in prospective adoptive homes unless such placements are contrary to the health, safety or welfare of one or more of the children.

The statutory requirement to provide or arrange for visitation and communication between separated siblings is applicable in all foster care and pre-adoptive placements, regardless of placement date, unless contrary to the health, safety or welfare of one or more of the children, or unless an exception is made for lack of geographic proximity. (See III.D for discussion of this exception.) Authorized agencies have no authority or legal responsibility to maintain visitation and communication between separated siblings whose adoptions have been finalized, but should counsel with and encourage adoptive families at the time of placement regarding the importance of maintaining sibling connections in such cases.

A. Level of Placement

The statutory and regulatory requirement to place a foster child in the "least restrictive setting" must be taken into consideration in the placement of siblings. This requires informed casework assessment and decision-making. Since foster family boarding homes, including approved relative foster homes, and agency-operated boarding homes are considered in the same category under both federal title IV-E standards and State utilization review regulations (18 NYCRR 430.11), social services districts have some flexibility available in the "least restrictive" setting requirement. Siblings placed together in certified foster homes, approved relative homes or in agency-operated boarding homes are considered to be in least restrictive settings.

However, the presumption for the placement of siblings together should not override the need for one or more of the siblings to be placed in a higher level of care; for example, when one of the siblings must be placed in congregate care or in an institution for medical, mental health, or behavioral reasons. In such cases, the assessment involving appropriate mental health or other health care professional consultants should be clearly documented in the case record to indicate that the health, safety or welfare of the children requires separation.

B. Placement With Relatives

The requirement for placement of siblings together extends to approved relative foster care placements. Placement together is presumed to be in the best interests of the children unless such placement is determined to be contrary to the health, safety or welfare of one or more of the children based on an assessment in consultation with appropriate professional staff. Factors to be considered must include, but are not limited to, age differences, health and developmental

differences, emotional relationships, individual service needs, attachment to separate families or locations, and continuity of environment.

However, such an assessment may indicate that separate placements with approved relatives can best preserve the emotional ties of extended family relationships if such placements provide opportunities for continuing interaction among the siblings. In such cases, separation of the children while retaining a familiar environment and/or close contact may be preferable to placement together in an unfamiliar environment with certified foster parents. The social services district is responsible for documentation of the specific reasons and process followed in making such a decision.

When reporting to the Family Court concerning the availability of appropriate relative placement for siblings taken into foster care, the social services district is responsible for ensuring that no recommendation for separation is made without the required assessment/consultation, considering the factors listed in the previous paragraph and in Section III. G. below. When there is no documented factor for separation of the siblings other than the fact that the children would be placed with relatives, only the court can determine that placing children separately with relatives is preferable in itself to the placement of siblings together in a certified foster home or agency operated boarding home.

C. Foster Parent Applications for Adoption

Section 421.19 of Department regulations requires that foster parents with whom children have been placed for 12 continuous months be notified when the children become freed for adoption and that an adoption application be taken if the foster parents wish to adopt the children.

In the case of siblings who in the past were placed separately in foster homes and now have become free for adoption, the social services district is responsible for determining, through a careful assessment process in consultation with appropriate professional staff, whether reunification and replacement would be contrary to the health, safety or welfare of one or more of the children. The factor of emotional attachment becomes an important consideration in such cases.

In the future, as Department policy and regulations are effectively implemented, separation of siblings without good cause should be virtually eliminated in foster care placements. Therefore, cases in which a foster family has the right of first preference in adopting a separated sibling -- but does not wish to adopt the other sibling(s) -- will occur infrequently. Until that time, authorized agencies must make case-by-case decisions based on the best interests of each of the separated siblings freed for adoption. A determination to retain the

separation of the children in different adoptive homes must be made after an assessment in consultation with other appropriate professionals, documenting that reuniting the children would be contrary to their best interests.

When no adoptive home is available for the placement of siblings together, six months may be considered a reasonable maximum timeframe for diligently searching to recruit such a family. It is recommended that authorized agencies and staff cooperate in developing and maintaining regular communication and contacts across county and agency boundaries in order to broaden the potential pool of prospective adoptive parents willing to accept siblings.

D. Visitation and Communication Among Siblings

Authorized agencies are responsible for ensuring that siblings who are placed separately in foster care or pre-adoptive placements, regardless of placement date, are able to maintain at least regular biweekly visitation and communication with each other as a minimum standard.

Biweekly visitation is required unless such visitation has been determined and documented to be contrary to the health, safety or welfare of one or more of the children or unless the siblings are placed at such a distance from each other that lack of geographic proximity precludes visitation. The law and regulations do not define the "lack of geographic proximity." Therefore, the agency supervising the placement will need to determine the best interests of the children in relation to available transportation, time, environment, and supervision. Extraordinary transportation costs are reimbursable as special payments. Certified foster parents, approved relative foster parents and prospective adoptive parents, as well as agency staff, are expected to cooperate in facilitating visits between siblings. However, the primary responsibility for arranging and overseeing visitation lies with the agency supervising placement of the children.

When visitation on a biweekly basis is determined to be contrary to the health, safety or welfare of one or more of the children or not possible due to lack of geographic proximity, then authorized agencies are responsible for ensuring that some form of regular biweekly contact, by telephone or mail, is maintained between siblings. The only exception to this rule is when an assessment/consultation determines that such communication would be contrary to the health, safety or welfare of one or more of the children.

When lack of geographic proximity is adequately documented as the reason for inability to follow the minimum biweekly visitation standard, an alternative visitation plan regularly scheduled in conjunction with other forms of communication is expected in order to meet the biweekly requirement.

E. Emergency Placements

In situations where children must be removed on an emergency basis from their homes and placement made immediately for the safety of the children, and no foster home is immediately available to care for the siblings together, the children may be placed separately on a temporary basis. Department regulations (section 431.10) previously required that the siblings be reunited within 60 days of the emergency placement separating them. However, Chapter 854 of the Laws of 1990 and the Department's revised regulations require that the siblings be reunited within 30 days unless reunification would be contrary to the health, safety or welfare of one or more of the children.

F. Recruitment for Siblings Placement

Local efforts to recruit foster and adoptive homes should include publicity concerning the need for homes willing to accept siblings. All agencies are encouraged to recruit homes able to serve siblings on an emergency basis in order to avoid separation in emergency placements. Agency staff persons meeting with community groups and foster care orientation and training sessions provide opportunities to discuss the need for foster and adoptive parents to care for siblings. Homefinding visits and interviews provide other opportunities to question prospective foster and adoptive parents regarding their willingness to care for siblings.

G. Assessments For Validating Separation

Department regulations require an assessment/consultation with other appropriate professional staff by the caseworker and/or supervisor in order to determine and document that placement together is contrary to the health, safety or welfare of one or more of the siblings (other than emergency placements for no more than 30 days). The regulations state (see sections 421.18 and 431.10) that the assessment is to be based on "consultation with, or an evaluation by, other professional staff, such as a licensed psychologist, psychiatrist, other physician, or certified social worker." Since the statutory standard for separation is the "health, safety or welfare" of the siblings, there is clearly a need for an assessment to include persons with specialized skills in medical, mental health or counseling fields. Agencies with in-house access to such specialists are not required to seek "outside" consultants. The caseworker's role is to confer with and to provide all available information in the case to the consultant(s) for review and consideration. Caseworkers and supervisors acting alone cannot make a decision for sibling separation except in temporary emergency placements for not more than 30 days.

Careful documentation of the assessment in the case record is essential to ensure that the agency has met all statutory and regulatory requirements related to siblings for court review purposes and for protection in possible cases of future court actions regarding the case.

Factors to be considered by those participating in the consultation/evaluation regarding sibling separation include, but are not limited to, the following, which are listed in Department regulations (sections 421.18 and 431.10):

1. Age differences - This should rarely be considered an important factor, but there are instances where an infant or toddler may have a teenage sibling, and in the judgment of professional consultants, the emotional health or welfare of one or more of the siblings would be better served in separate placements. For example, when a sibling or half-sibling is born long after an older sibling has been in care, the older child may have formed a strong emotional attachment to the placement family, and the foster or adoptive home is not able or willing to accept the infant for placement. In such cases a separation determination can be based only on the best interests of the children involved and only after a careful assessment/consultation.
2. Health and developmental differences - This factor requires an assessment by medical and counseling consultants and should be an important issue only when one or more siblings have severe disabilities or emotional or behavioral problems requiring specialized care in a program which is not appropriate for the other siblings.
3. Emotional relationship of the siblings to each other -- This factor, too, should rarely be considered a basis for separation and only when a mental health professional has documented that placement together would be detrimental to the emotional health, safety or welfare of one or more of the children.
4. Individual service needs - This factor allows for separation on the basis of the need for highly specialized and individualized care for one or more of the siblings. Such care may be needed for severe disabilities or medical problems, or severe emotional or behavioral problems requiring a different level of placement.
5. Attachment of individual siblings to separate families or locations - This may be a consideration when siblings were placed separately prior to implementation of the Department regulations promulgated in 1988. In cases of infant siblings born after the placement of an older sibling, or in cases where a child enters foster care at a later date than another sibling, the factor of bonding and attachment may be an important and valid point to be considered in assessing whether separation may be justified.
6. Continuity of environment standard - This factor, which is a federal as well as a state regulatory foster care placement standard relating to the safety and welfare of all the siblings, would rarely be a valid reason for separation. However, there may

be instances when one child's enrollment in a highly specialized school program or in a specialized neighborhood treatment center may be a consideration in determining that separation is justified for the health and welfare of that child. In addition, the continuity of environment standard may be a factor in the separation of siblings for placement in approved relative homes in close proximity and contact with each other. In such cases the maintenance of an extended family or neighborhood environment may be an important consideration in determining the best interests of the children.

Please Note: The Department regulations which became effective in 1988 allowed consideration of the factor of availability of foster and adoptive parents willing or able to accept siblings. This factor was deleted when the Department revised its regulations to comply with Chapter 854 of the Laws of 1990. Authorized agencies are now expected to make diligent efforts to recruit foster and adoptive parents willing to care for siblings. Separation of siblings may be justified only under the "health, safety or welfare" standard.

H. Department Monitoring

Monitoring of compliance with the statute and regulations will be accomplished through continuing Departmental oversight procedures, including periodic case reviews and sibling data collection reports.

IV. REQUIRED ACTION

The following actions must be taken by authorized agencies in order to comply with Chapter 854 of the Laws of 1990 and Department regulations regarding placement of siblings together in foster care and adoption:

A. Effective immediately, authorized agencies must place siblings together in foster care and adoption unless such placement is determined to be detrimental to the health, safety or welfare of one or more of the children. (See Section III of this directive.) This requirement for placement together is applicable whether siblings enter care at the same time or at different points in time. Retroactive application or disruption of existing placements when such disruptions would adversely affect the siblings in care is not the intent of this directive.

B. The authorized agency must presume placement of siblings together is in the best interests of the siblings UNLESS a careful assessment has determined that such placement would be contrary to the health, safety or welfare of one or more of the children.

This assessment must be based on consultation with, or an evaluation by, other professional staff, such as a licensed clinical psychologist, psychiatrist, other physician, or certified social worker.

Factors to be considered in the assessment must include, but are not limited to, the following: age differences, health and developmental differences, emotional relationships, individual service needs, attachment to separate families or locations, and continuity of environment.

Please note: For a discussion of the factors which must be taken into consideration in making a determination to separate the siblings, see Section III. G. of this directive.

C. When siblings must be removed from their homes in emergency situations, and no foster family home is immediately available to accept the entire sibling group, the children may be placed in separate homes. However, they must be reunited within 30 days unless placement together would be contrary to the health, safety or welfare of one or more of the children.

D. The procedures required for placement of siblings in approved relative (kinship) foster homes are the same as those required for placement in certified foster homes or prospective adoptive homes. In addition, there are requirements in Section 1017 of the Family Court Act to determine the availability of relatives to care for children coming before the court in child protective proceedings. Similar provisions exist for voluntarily placed children (see Sections 384-a and 392 of the Social Services Law). All applicable mandates must be considered in making placement decisions.

There may be situations where an assessment/consultation with appropriate professional staff determines that placement together would be contrary to the health, safety or welfare of one or more of the siblings if such placement means separation from an extended family environment. For example, two relative families are living in close proximity to each other, and each is willing to care for part of a sibling group and to maintain sibling contact. An assessment/consultation may determine that placement of the children together with a non-relative foster family with whom they have no ties is contrary to the emotional welfare of the children. In such cases, governing factors may include, but are not limited to, age, emotional relationships, attachments, the requirements for continuity of environment. However, separation of siblings solely for the purpose of placement with relatives is not permitted unless the court orders such placement. In the absence of such a court order, separate placements may occur only if the required assessment/consultation justifies the separation based on the health, safety or welfare of one or more of the children.

E. If siblings are placed apart, certified foster parents and approved relative foster parents must agree to cooperate with authorized agencies in providing or arranging for visitation and communication, but the authorized agency has primary responsibility for ensuring that such contacts occur.

1. Authorized agencies must ensure that, at a minimum, regular biweekly visitation is arranged for siblings who are placed separately UNLESS such visitation would be contrary to the health, safety or welfare of one or more of the children.

The law permits an exception for "lack of geographic proximity." This should be interpreted to mean a distance great enough to cause substantial hardship and cost for an agency responsible for facilitating visitation. Available transportation, public and private, time, environment, and supervision may also be appropriate considerations. Extraordinary transportation costs are reimbursable as special payments.

2. Authorized agencies must also facilitate communication among siblings on a regular basis unless such contact is determined to be contrary to the health, safety or welfare of one or more of the children. Forms of communication most commonly used would be letters, cards and notes, and telephone calls. Local telephone calls should not result in any increased cost to foster parents or agencies. Long distance calls require careful supervision and discussion between the foster parents and the supervising agency concerning available cost reimbursement as a special payment.

F. When a foster parent who has cared for one or more of a group of siblings for at least 12 months continuously wishes to adopt one or part of a group of siblings freed for adoption, the authorized agency must accept the application, but must inform the foster parent that the siblings are to be placed together in a prospective adoptive home. If the foster parent is unable or unwilling to accept the siblings together, the agency must make an assessment after consultation with appropriate professional staff regarding the best interests of the children. Placement together is presumed to be in the siblings' best interests unless such placement is determined to be contrary to the health, safety or welfare of the children based on an assessment of the factors discussed in Section III. G. above.

The best interests of the siblings must take priority over the foster parent right of preference in adoption. If an assessment indicates there is no basis for separation of the siblings other than foster parent preference, the agency must make a diligent effort to find another prospective adoptive home willing and able to accept the placement of siblings together. Six months may be considered a reasonable maximum timeframe for diligently searching to recruit such a family.

G. The authorized agency responsible for supervising the placement of the siblings in foster care or adoptive homes must document in the uniform case record that:

1. diligent efforts were made to place the siblings together unless such placement was determined to be contrary to the health, safety or welfare of one or more of the siblings;

2. before siblings were placed separately, an assessment justifying the separation was made in consultation with other named professional staff, and their findings, as recorded, justify separation on the basis of the health, safety or welfare of one or more of the children;

or

the court has ordered separate placement of the siblings in relative homes;

or

the court has ordered separate placement for purposes of adoption;

3. when siblings were placed separately, foster parents, prospective adoptive parents, and the siblings themselves (when age appropriate) were informed of the existence and location of all of the child's siblings;

4. arrangements were made for regular biweekly visitation, at a minimum, among separated siblings or reasons why such visitation is contrary to the health, safety or welfare of one or more of the children or is not possible;

5. arrangements for regular communication among separated siblings have been facilitated or reasons why such contact is contrary to the health, safety or welfare of one or more of the children.

V. SYSTEMS IMPLICATIONS

None.

VI. EFFECTIVE DATE

This directive is effective on May 15, 1992, retroactive to September 1, 1990, the effective date of Chapter 854 of the Laws of 1990. This directive also incorporates requirements in the Department regulations on siblings placement which became effective on July 26, 1988, and the amendments to those regulations which became effective on September 25, 1991.

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