



Office of Children and Family Services

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Informational Letter

Transmittal:	23-OCFS-INF-05
To:	Commissioners of Local Departments of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Division of Child Welfare and Community Services
Date:	April 5, 2023
Subject:	New York State Court of Appeals Decision on Applicability of the ICPC on Parent Placements
Suggested Distribution:	Social Services Directors Child Welfare Supervisors Foster Care Supervisors County Attorneys
Contact Person(s):	See Section V.
Attachments:	New York State Court of Appeals Opinion: <u>In the Matter of D.L. v. S.B. et al.</u>

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			SSL §374-a		

I. Purpose

The purpose of this informational letter (INF) is to inform local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the opinion issued on October 25, 2022, by the New York State Court of Appeals (Court of Appeals) about the applicability of the Interstate Compact on the Placement of Children (ICPC) to placements of children with their parents. As will be addressed in greater detail below, it was the opinion of the Court of Appeals that the ICPC is not applicable to such placements.

II. Background

The facts of the case decided by the Court of Appeals in the attached opinion, In the Matter of D.L. v. S.B. et al., include a child who had been removed from the child’s mother and placed in foster care with an LDSS. The child’s father, who resided in another state, was considered a potential placement resource for the child, and an ICPC application/request was submitted to the ICPC office of the state in which the father resided. The relevant authority in the father’s state of

residence denied the ICPC application/request. The father then commenced a custody proceeding seeking custody of their child.

The trial court dismissed the father's custody petition holding that the ICPC applied to the proposed placement of the child with the child's father who resided in another state and because the father's state of residence had denied the ICPC application/request for placement. The Appellate Division concurred with the trial court's dismissal of the father's custody petition on the same grounds. For the reasons set forth below, the Court of Appeals rejected and reversed the lower court decisions.

The Court of Appeals applied the express language of New York's ICPC statute (§374-a of the SSL) and found "By its terms, the ICPC governs the out-of-state 'placement' of children 'in foster care or as a preliminary to possible adoption.'" The Court of Appeals referenced the statutory definition of "placement," which is limited to the "care of a child in a family free or boarding home or in a child-caring agency or institution," and concluded, "The language of the statute thus unambiguously limits its applicability to cases of placement for foster care or adoption." The Court of Appeals held that "the ICPC does not apply to placement with a parent."

The Court of Appeals stated that although the ICPC does not apply to placements of children in foster care with a parent, "the Family Court Act contains other effective means to ensure the safety of a child before awarding custody to an out-of-state parent." Examples were referenced of holding hearings by the family court and requesting courtesy investigations and reports from an LDSS or department of probation. The Court of Appeals also referenced several additional statutory options and authority available under the Family Court Act.

III. Program Implications

There is no change to ICPC cases involving parents where the receiving state's ICPC office granted full and final approval to the ICPC application/request prior to October 25, 2022. Those cases will be subject to standard ICPC termination grounds and procedures.

Effective October 25, 2022, the New York State Office of Children and Family Services (OCFS) ICPC office will no longer accept ICPC applications/requests for the placement of a child with the child's parent whether the parent resides in New York or another state.

The OCFS ICPC office has informed the American Public Human Services Association, which provides administrative support to the ICPC member states, of the Court of Appeals' opinion and its impact on OCFS ICPC practice. The OCFS ICPC office is in the process of revising forms and other documents to implement the Court of Appeal's opinion.

IV. Systems Implications

The impact of the Court of Appeals opinion will be reflected in the case recording in the ICPC database, the National Electronic Interstate Compact Enterprise (NEICE).

V. Contacts

Any questions concerning this release should be directed to the appropriate regional office in the OCFS Division of Child Welfare and Community Services:

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VI. Effective Date

This release is effective immediately upon issuance.

/s/ Lisa Ghartey Ogundimu, Esq.

Issued By:

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Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services