



# Office of Children and Family Services

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## Administrative Directive

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| <b>Transmittal:</b>             | 15-OCFS-ADM-19  |
| <b>To:</b>                      | Commissioners of Social Services<br>Executive Directors of Voluntary Authorized Agencies  |
| <b>Issuing Division/Office:</b> | Strategic Planning and Policy Development   |
| <b>Date:</b>                    | September 11, 2015  |
| <b>Subject:</b>                 | <b>Planning for a Successful Adulthood: Another Planned Permanent Living Arrangement with a Permanency Resource (APPLA) for Youth 16 Years of Age and Older</b>   |
| <b>Suggested Distribution:</b>  | Directors of Social Services<br>Child Protective Services Supervisors<br>Child Welfare Supervisors<br>Foster Care Supervisors<br>CONNECTIONS Implementation Coordinators  |
| <b>Contact Person(s):</b>       | Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:<br>Buffalo Regional Office-Dana Whitcomb (716) 847-3145<br><a href="mailto:Dana.Whitcomb@ocfs.ny.gov">Dana.Whitcomb@ocfs.ny.gov</a><br>Rochester Regional Office-Karen Buck (585) 238-8201<br><a href="mailto:Karen.Buck@ocfs.ny.gov">Karen.Buck@ocfs.ny.gov</a><br>Syracuse Regional Office-Sara Simon (315) 423-1200<br><a href="mailto:Sara.Simon@ocfs.ny.gov">Sara.Simon@ocfs.ny.gov</a><br>Albany Regional Office-Kerri Barber (518) 486-7078<br><a href="mailto:Kerri.Barber@ocfs.ny.gov">Kerri.Barber@ocfs.ny.gov</a><br>Spring Valley Regional Office-Yolanda Désarmé (845) 708-2498<br><a href="mailto:Yolanda.Desarme@ocfs.ny.gov">Yolanda.Desarme@ocfs.ny.gov</a><br>New York City Regional Office-Raymond Toomer (212) 383-1788<br><a href="mailto:Raymond.Toomer@ocfs.ny.gov">Raymond.Toomer@ocfs.ny.gov</a><br>Native American Services-Heather LaForme (716) 847-3123<br><a href="mailto:Heather.LaForme@ocfs.ny.gov">Heather.LaForme@ocfs.ny.gov</a> |
| <b>Attachments:</b>             | None  |

**Filing References**

| <b>Previous ADMs/INFs/LCMs</b>       | <b>Releases Cancelled</b> | <b>NYS Regs.</b>                            | <b>Soc. Serv. Law &amp; Other Legal Ref.</b>                                      | <b>Manual Ref.</b>                          | <b>Misc. Ref.</b> |
|--------------------------------------|---------------------------|---|---|---|-------------------|
| 11-OCFS-ADM-03<br><br>11-OCFS-INF-02 |                           | 18 NYCRR §§428.5(c)(13) and 430.12(f)(1)(i) | SSA §§475(5)(C)(i) and 475A<br><br>FCA §§355.5, 754, 756-a, 1039-b, 1052 and 1089 | The Adoption Services Guide for Caseworkers |                   |

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to address the implementation of several provisions of the federal Preventing Sex Trafficking and Strengthening Families Act (the Act) [P.L. 113-183]. This ADM focuses on amending Another Planned Permanent Living Arrangement with a Permanency Resource (APPLA) as a permanency planning goal (PPG) by eliminating APPLA for children in foster care under 16 years of age and adding new criteria to what the state must document and the court must consider at a permanency hearing where APPLA is the requested permanency plan.

**II. Background**

On September 29, 2014, President Obama signed the Act into law. The Act amended various provisions of Title IV-E and IV-B of the Social Security Act (SSA). For the purposes of this ADM, we will highlight the sections of the Act that relate to eliminating the use of APPLA for children in foster care under 16 years of age and the new permanency hearing report documentation requirements for youth who have an APPLA goal.

More specifically, the Act amends §475(5)(C)(i) of the SSA to eliminate the permanency goal of APPLA for youth under 16 years of age.

Several provisions of the Act necessitated amendments to various sections of the Family Court Act (FCA) to reflect the elimination of APPLA for youth under 16 years of age and the new permanency hearing documentation requirements for youth with a permanency planning goal (PPG) of APPLA.<sup>1</sup> These amendments, enacted in state law as part of Part L of Chapter 56 of the Laws of 2015, require local departments of social services (LDSSs) and voluntary agencies (VAs) to document for each youth in foster care with a PPG of APPLA: (a) the intensive, ongoing and unsuccessful efforts to return the youth home or to secure placement for the youth with a fit and willing relative (including adult siblings, a legal guardian or legal custodian, or an adoptive parent), including efforts made that utilize technology (including social media) to locate family members of the youth; (b) the steps taken to ensure that the youth's foster home or congregate care facility is following the reasonable and prudent parent standard; and (c) that the youth has regular, ongoing opportunities to engage in age or developmentally appropriate activities.<sup>2</sup> These provisions of the Act are effective September 29, 2015; however, the

<sup>1</sup> FCA §§ 355.5, 754, 756-a, 1039-b, 1052 and 1089.

<sup>2</sup> Part L of Chapter 56 of the Laws of 2015, §18.

statutory amendments to the FCA and the regulations promulgated by the New York State Office of Children and Family Services (OCFS) to address these amendments to the SSA took effect September 1, 2015.<sup>3</sup> Further guidance regarding the reasonable and prudent parenting standard will be provided in a separate policy.<sup>4</sup>

OCFS engaged key stakeholders in conversations on how to effectively implement these and several other provisions of the Act by conducting focus groups with youth throughout the state, and work groups with OCFS staff. OCFS led a full-day symposium with LDSSs, VAs, and other stakeholder agencies on June 2, 2015, followed by telephone conferences with symposium participants.

### III. Program Implications

Prior to the enactment of the Act, APPLA was a PPG that could be utilized and, in many cases, was used successfully for youth age 14 and older, and some relative placements. However, not all youth thrive when given independence. The Act delays the accessibility of APPLA as a PPG for youth from age 14 to age 16, which gives youth more time to develop stable and trusting relationships, as well as mature more and develop greater ability to understand the implications of choosing APPLA as a goal.

Conversations with the youth regarding permanency planning should begin when a youth enters foster care and continue until permanency for the youth is achieved. Youth should also have the opportunity to discuss permanency options with same-age or older peers who were in the foster care system. These conversations should address concerns the youth may have about permanency, help the youth identify various permanency options, discuss the youth's wants and needs, and encourage the youth to consider wisely all of his or her options. It is important to remember that a youth may reject a permanency option but may later change his or her mind when he or she feels that option is a better fit. He or she may also feel more comfortable and open-minded when speaking with youth who have gone through similar experiences and are closer in age to themselves. Peer support for youth in foster care tends to take place informally at conferences and through youth leadership activities where youth in their mid- to late-teens can share experiences and support one another.<sup>5</sup> Efforts to increase the frequency of these interactions can help youth more effectively understand their permanency options. It is critical that workers are aware of this and make an effort to expose the youth they are working with to both adults and youth who can have a positive impact on the permanency goal decision.

Although conversations with a youth regarding permanency planning must be consistent and ongoing, the service plan review (SPR) and/or case consultation are opportunities to

<sup>3</sup> 18 NYCRR §§ 428.5(c)(13) and 430.12(f)(1)(i).

<sup>4</sup> Reasonable and Prudent Parent Standard is defined as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child in foster care while at the same time encouraging the emotional and developmental growth of the child, that a caregiver must use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities."

<sup>5</sup> Ansell, D., Insley, S. (2013). *Youth Peer-to-Peer Support: A Review of the Literature*. Elizabeth City, NC: Youth Move National.

<http://www.youthmovenational.org/images/downloads/YouthPeertoPeerLiteratureReviewFINAL.pdf>

have and document the case planning and permanency planning conversation with the youth and all members of the youth's case planning team. A significant portion of the SPR and case consultation should focus on the status of, and the progress toward, the child's permanency plan, including the appropriateness of the child's PPG. All of the PPG options should be explored. Case planning teams should also concurrently plan with the youth by identifying and working towards alternative permanency plans rather than only focusing on the youth's current PPG.

After discussing and exploring each of the available PPGs for a youth, it may be determined that APPLA is the best PPG for some youth when they turn 16 years of age. For these youth, LDSSs and VAs should continuously engage the youth in conversations regarding other PPG options. For **ALL** youth with an APPLA PPG, LDSSs and VAs must demonstrate and document the intensive, ongoing, and unsuccessful efforts to return the youth home, or to secure placement for the youth with a fit and willing relative, including adult siblings, a legal guardian or legal custodian, or an adoptive parent. These efforts must include the use of technology (including social media), to locate family members of the youth.<sup>6</sup>

Locating family members for youth in foster care can be a challenging but critical task. Family is important for both placement resources and for emotional supports/connections, if a positive connection can be established. In order for family finding to be successful, workers need to utilize as many resources as possible, including the use of technology. The Act, state law and OCFS regulations require the documentation of the use of technology to locate family members of a child/youth in foster care.<sup>7</sup> Technology and social media are powerful tools that can help caseworkers and child welfare professionals locate family members of a child or youth. Social media is free, aids in long-distance relationships, and helps access networks of friends. Through searching various social networks, it is possible to locate family members of a child. People have been reunited with birth parents, siblings and others through social media.

#### IV. Required Action

##### Elimination of APPLA for youth under the age of 16

As of September 1, 2015 (the date New York State amended statutes and regulations will take effect):

- No youth under 16 years of age will be allowed to receive the PPG of APPLA;<sup>8</sup> and
- All youth under age 16, who prior to September 1, 2015 have the PPG of APPLA, must have his or her PPG changed by the youth's next permanency hearing following September 1, 2015.

For the youth who must have his or her PPG changed, the worker **must** explore alternative permanency goals with the youth, guide the youth through the decision-

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<sup>6</sup> 18 NYCRR 428.5(c)(13).

<sup>7</sup> 18 NYCRR 428.5(c)(13)(i).

<sup>8</sup> 18 NYCRR 430.12 (f)(1)(i).

making process and help the youth understand the consequences of the option they choose. After changing the youth's PPG, workers **must** document in the permanency hearing report the efforts taken to achieve the youth's new PPG in order to present it to the court for approval at the youth's next permanency hearing.

The PPG that a child/youth may have is dependent on whether the rights of the parent(s) of the child/youth have been surrendered or terminated. Listed below are the PPGs that may be available for the child/youth and best practice suggestions and resources to reference prior to the selection of a new PPG.

#### Permanency Planning Goal Options:

Workers should have discussions with youth to determine the most appropriate PPG. In the case of youth who are under 16 years of age, there are PPGs that are an alternative to APPLA. The following are PPGs that should be considered and are **not** listed in order of preference:

#### **Return to Parent**

The preferred permanent placement for most youth in foster care is return to parent, and support services to promote this goal should be part of the case plan. However, when return to parent cannot happen, due to reasons of safety or other considerations, another PPG must be considered.

Restoration of parental rights, while not a PPG, is another option (not a mandate) for LDSSs and VAs to consider when permanency planning with a youth, 14 years of age or older, who either made the decision not to consent to adoption, or for which an adoptive home has not been found after the rights of his or her parent(s) were terminated, and who is unable to have a PPG of APPLA due to requirements of the Act. Chapter 343 of the Laws of 2010 authorizes the family court, in narrowly defined circumstances, to restore a birth parent's parental rights after they have been terminated.<sup>9</sup> The Informational Memorandum, [11-OCFS-INF-02, Restoration of Parental Rights](#), explores in detail the requirements and process LDSSs and VAs must follow to request a restoration of parental rights.<sup>10</sup>

#### **Permanent Placement with a Fit and Willing Relative**

The PPG of placement with a fit and willing relative is an alternative PPG for a youth when return to parent, adoption, or referral for legal guardianship are not feasible options. Seeking out and assessing relatives to become a permanency resource for a youth in foster care must be done early on in the youth's placement in foster care and continue until permanency is achieved for the child/youth. In order to identify potential relative placement resources, workers, at minimum, should engage the youth and parents in conversations, utilize social media, and explore other methods for identifying placement resources.

#### **Referral for Legal Guardianship**

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<sup>9</sup> FCA §§ 635-637 and 1091.

<sup>10</sup> [http://ocfs.ny.gov/main/policies/external/OCFS\\_2011/#INF](http://ocfs.ny.gov/main/policies/external/OCFS_2011/#INF)

Referral for legal guardianship is an option for youth who are reluctant to have legal ties permanently severed from their birth parents, as would occur through adoption, while still providing the youth a legal and permanent family. Parental rights may or may not be terminated for a youth to have this PPG. Guardians, who may be relatives or non-relatives, are given parental responsibility and authority for the youth by a court.

In determining whether to grant guardianship of a youth 14 years of age or older, the court must consult with the youth and take into consideration the youth's preference for a suitable guardian.<sup>11</sup>

Kinship Guardianship Assistance Payments (KinGAP) may be available for certified or approved kinship foster parents who choose to become legal guardians of the youth. KinGAP may also be available to a successor guardian if the original KinGAP relative guardian receiving KinGAP payments dies or is incapacitated. The ADMs, *Kinship Guardianship Assistance Program (KinGAP)* ([11-OCFS-ADM-03](#)) and *Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian* ([15-OCFS-ADM-15](#)), provide comprehensive information and guidance to LDSSs and VAs about KinGAP and providing KinGAP to a successor guardian. These ADMs can also be found on the OCFS website at <http://ocfs.ny.gov/main/policies/external/>.

### **Placement for Adoption**

For the majority of children and youth unable to return home, adoption is the preferred permanency plan because it offers a lifetime commitment and the sense of belonging and stability that a child or youth needs to develop into a healthy adult.

However, many older youth are ambivalent, or even feel negatively, about adoption. Some youth suffer from attachment disorders and have difficulty forming healthy relationships and trust because of life experiences. An older youth may be concerned about permanently severing his or her attachment to his or her birth family due to the termination of parental rights and by accepting a “new” family.

Exploring the possibility of a conditional surrender may help to alleviate these concerns. Conditional surrenders allow for both a permanent legal family for the youth and continued connections with birth parents, siblings, or other relatives.

New York State law states that a youth over the age of 14 must consent to adoption unless the court, in its discretion, dispenses with such consent.<sup>12</sup>

An initial response of “no” to a discussion about adoption with a youth should be just the beginning of a series of developmentally appropriate discussions about the youth's future and his or her need to be connected to caring adults, and possibly his or her siblings, throughout his or her life. Many youth who attended the focus groups conducted by OCFS to prepare for the implementation of the Act felt that if they chose adoption as a PPG, they must choose whichever adoptive resource is presented to them. Explaining to the youth that he or she is an equal partner in choosing an adoptive resource, and that the youth and potential adoptive family both decide whether the placement is desirable, may encourage the youth to at least consider potential adoptive resources. The Adoption Services Guide for Caseworkers found on the OCFS website is a valuable resource that

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<sup>11</sup> FCA §§ 1055-b and 1089-a.

<sup>12</sup> Dom. Rel. Law § 111.

was created to support caseworkers who provide adoption services to children in foster care and their families.<sup>13</sup>

### Using Social Media to Locate Family Members and Resources

The Act, state statutes, and OCFS regulations require documentation of efforts made to locate family members of foster children with a PPG of APPLA that utilize search technology, including social media. When doing so, it is important to maintain confidentiality and be aware and up to date on social media sites privacy policies. No communication on social media sites should be considered private or confidential. Comments made on someone's Facebook page on their "wall" may be visible to their entire network—or yours—depending on privacy settings. Even with high privacy settings, communications can be forwarded to others and shared in other ways. Facebook profiles also appear in search results on Google and other search engines. There is also no guarantee that the information posted on a social media site is accurate, and workers must remember that the youth's safety is the number one priority.

The worker **must not** identify the youth or provide any case specific information through social media, including, but not limited to, the circumstances surrounding the youth's placement into foster care.

- Workers **may** provide their own contact information to the identified family member via private message (PM).
- In the PM the worker **may** request that the family member contact the worker regarding a possible family member who is in foster care and the potential for the family member to be a placement resource for the yet-to-be-identified child.
- After the family member contacts the worker, the worker **must** speak to the family member to ascertain his or her identity and to determine whether the person is, in fact, a family member. At this time, the worker can identify the child/youth who is in foster care, but **must not** reveal specific circumstances of the placement.
- If, after the identity of the family member is determined, the family member informs the worker during this initial conversation that he or she is not interested or able to be involved in the case, the relative letter does **not** need to be sent.
- If the family member is interested in being considered as a resource, the worker **must** request contact information for the family member and mail the family member the relative letter. The worker should also schedule a phone conference and/or face-to-face meeting to discuss information regarding the youth. If the family member does not respond to the PM, the worker is not required to send out subsequent messages through social media to the family member.

It is recommended that LDSSs and VAs develop social media policies to allow for workers to utilize social media in order to search for family members while maintaining confidentiality and safety of youth and children in foster care.

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<sup>13</sup> New York State Office of Children and Family Services. *Adoption Services Guide for Caseworkers*.

[http://ocfs.ny.gov/adopt/adopt\\_manual/Adoption%20Services%20Guide%20October%202010%20FULL%20booklet.pdf](http://ocfs.ny.gov/adopt/adopt_manual/Adoption%20Services%20Guide%20October%202010%20FULL%20booklet.pdf) .

### Youth with APPLA PPGs and new Permanency Planning Hearing (PPH) requirements

If through the ongoing conversations with the youth, age 16 and older, and the case planning team, it is determined that efforts to secure a PPG other than APPLA have been unsuccessful and that the youth must continue to have a PPG of APPLA, the worker **must** document in the case progress notes and in each permanency hearing report (PHR):

- The efforts that have been taken to make the determination for the youth to have a PPG of APPLA; including the intensive, ongoing and unsuccessful efforts made to return the youth home or to secure a placement for the youth with a fit and willing relative (including adult siblings), a legal guardian or legal custodian, or an adoptive parent(s), since the last permanency hearing;<sup>14</sup>
- The reasons why each of the other PPGs are not in the best interests of the youth;
- The use of search technology, including social media, to locate family members of the youth; and
- The steps taken to ensure that the youth's foster home or congregate care facility is following the reasonable and prudent parent standard, and that the youth has regular, ongoing opportunities to engage in age or developmentally appropriate activities.

Please see the system implications section for the changes being made to the CONNECTIONS permanency hearing reports in order to incorporate these new requirements.

State legislation enacted in 2015 and effective September 1, 2015 requires that the court ask each youth with an APPLA PPG about his or her desired permanency outcome, and for the court to make a judicial determination as to why, APPLA is the best PPG for the youth and why it continues not to be in the best interests of the youth to have each of the alternate PPGs.<sup>15</sup> Such documentation is important for the LDSS to obtain a timely determination from the court that reasonable efforts were made to finalize the child's permanency plan which, for Title IV-E eligible foster children, is an ongoing eligibility requirement.

## **V. Systems Implications**

Changes are being made to the permanency hearing report (PHR) and Family Services Stage (FSS) to incorporate the elimination of APPLA as a PPG for youth under age 16, and to include the additional documentation requirements for a youth with a PPG of APPLA. These changes are outlined below and are anticipated to be released as part of the CONNECTIONS modernization build.

Meanwhile, workers must document all efforts to secure a PPG other than APPLA for all youth in foster care age 16 years of age and older for whom an APPLA goal is being requested in case progress notes.

### Family Services Stage (FSS)

<sup>14</sup> Where parental rights have been terminated or surrendered, it is OCFS' interpretation of federal and state requirements that the LDSS or VA has satisfied this requirement in regard to such parent.

<sup>15</sup> Chapter 56 of the Laws of 2015, Part L.

Workers will no longer be able to enter a PPG of APPLA for any child or youth in foster care under the age of 16.

Permanency Hearing Reports for youth age 16 or older with a PPG of APPLA:

In order to address the intensive, ongoing, and unsuccessful efforts to place the youth in a PPG other than APPLA Question 8A in the permanency hearing report has been revised.

- **Question 8A long version will now read:**

“Explain why it is not in the best interest of the child to return home, be placed for adoption, placed with a legal guardian, or placed with a fit and willing relative and describe the intensive, ongoing and unsuccessful efforts to return the child home, secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize technology (including social media) to locate family members for the children.”

- **Question 8A short version will now read:**

“Explain why APPLA is in the best interest of the child and how you arrived at that decision.”

Changes to the permanency hearing report to incorporate the documentation of the steps taken to ensure that the youth’s foster home or congregate care facility is following the reasonable and prudent parent standard, and that the youth has regular, ongoing opportunities to engage in age or developmentally appropriate activities, will be announced at a later date.

## **VI. Effective Date**

This directive is effective on the date of issuance.

*Thomas R. Brooks*

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**Issued By:**

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development