



# Office of Children and Family Services

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## Administrative Directive

<b>Transmittal:</b>	17-OCFS-ADM-14
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies (or other specific types of agencies)
<b>Issuing Division/Office:</b>	Child Welfare and Community Services
<b>Date:</b>	October 5, 2017
<b>Subject:</b>	Family Visiting Policy for Children in Foster Care
<b>Suggested Distribution:</b>	Directors of Social Services Child Welfare Supervisors Foster Care Supervisors LDSS and Agency Attorneys Caseworkers
<b>Contact Person(s):</b>	See section V of this ADM.
<b>Attachments:</b>	None

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 428.6(a)(2)(viii), (4)(iii), (6)(iii), and 7(iii) 430.12(d)(1), 431.10(e) and 431.14	Social Services Law §§384-a and 398(6)(o); Family Court Act §§1030, 1081 and 1089		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the need to develop a written policy, consistent with the safety and best interests of the child, related to regular parenting time (visitation by the parent of the child in foster care) and family visitation for children in foster care. This ADM notes that contact between the child and his or her parent(s) is aimed at parenting the child, thus throughout it is called parenting time. For other family members, it is called visitation. This ADM provides guidance to LDSSs and VAs on developing a

written policy, which should also be developed in consultation with relevant stakeholders and made available to families and stakeholders no later than 90 days from the release of this ADM.

Your district's written policy should be a guide when developing each child's visiting plan with his or her parent(s), guardian(s), sibling(s), half sibling(s) and other significant family member(s), potential permanency resources, and/or any other person of significance to the child. The written policy should also include determining the least restrictive level of supervision needed during visits for foster children with their families.

## **II. Background**

As New York State strives to improve its child-centered, family-focused child welfare practices to achieve better outcomes for children and families, LDSSs and VAs are encouraged to review current practices and policies related to parenting and family visiting for children in foster care. To guide decision-making about parenting time and family visiting, it is required that each LDSS and VA will develop a written policy that is consistent with the principles expressed in this ADM. Such written policy must be made available and provided to parents and other caretakers, foster parents, attorneys for children, and attorneys for parents when a child is placed in foster care. Transparency about expectations and decision-making processes provides the parties and all stakeholders with clear guidance about maintaining and cultivating children's connections with their parents and families while they are in foster care.

It is critical that children in foster care maintain frequent contact with their parents and other family members when it is safe to do so, unless the child is freed for adoption. Contact with family reduces the trauma of separation for children, improves their well-being while separated from their families, and helps expedite permanency regardless of the permanency goal.

New York law recognizes the importance of maintaining and strengthening children's connections with their family while in foster care. For example, the respondent in an Article 10 abuse or neglect proceeding "...shall be granted reasonable and regularly scheduled visitation unless the court finds that the child's life or health would be endangered thereby..." [Family Court Act § 1030(c).] Frequent and consistent parent-child contact that takes place in as natural an environment as possible preserves the emotional attachment of parents and children to each other, reduces the trauma of separation for both the child and the parent, allows parents to practice day-to-day parenting skills, and can expedite reunification. Where appropriate, visiting that includes "shared parenting" responsibilities (e.g., with the parent accompanying the child and foster parent to medical and school appointments or assisting the child with homework) could help to maintain and strengthen the parent-child bond and support the parent's ability to plan for the child's future.

## **III. Program Implications**

### **General Principles for Successful Parenting Time and Family Visiting**

Frequent contact between children in foster care and their families is critically important to child well-being and to timely reunification and other permanency goals. Research regarding the experiences of children in foster care has consistently demonstrated that

parenting time and family visiting is associated with positive outcomes and shortened lengths of separation of children from their families.<sup>1</sup>

A child's separation from his or her family and removal from his or her home is often a traumatic event for both the child and the parent. Regularly scheduled parent-child interaction when safe and appropriate, in as natural an environment as possible, can lessen the impact of the separation; help improve parenting skills; and maintain and strengthen the parent-child bond. Moreover, ongoing and increasingly frequent parent-child interaction is critical for the well-being of a child who is in foster care. Frequent parenting time also supports better informed permanency decisions as it allows for an evolving assessment of parental capacity and of the parent-child relationship.<sup>2</sup>

Maintaining contact with siblings, when they are not placed together, is equally important for a child's well-being. Authorized agencies are responsible for ensuring that diligent efforts are made to facilitate regular biweekly visitation or communication between minor siblings or half-siblings who have been placed apart, unless such contact would be contrary to the health, safety, or welfare of one or more of the children, or unless geographic distance precludes visitation.<sup>3</sup>

Subject to any court orders pertaining to visiting, decisions about the level of supervision during visits are to be made in accordance with each LDSS's written policy, as more fully discussed in section III of this ADM, Program Implications. This section establishes the presumption that unless certain conditions are present, *parent-child visitation* ("*parenting time*") should be unsupervised. Supervision of parenting time is appropriate when, for example, in regard to Family Court Article 10 proceedings, there is a reasonable basis to believe that a child may be at serious risk of physical and/or emotional harm or injury if visits are unsupervised, or a court has found that supervised visitation is in the child's best interest and issues an order to that effect.<sup>4</sup>

**1. Frequency and Location of Initial and Ongoing Visits:** Meaningful, frequent, and quality parent-child interaction has been shown to be highly predictive of safe and lasting reunification.<sup>5</sup> OCFS regulation 18 NYCRR 430.12(d)(1), requires, for children with the permanency goal of discharge to parents, that LDSSs and VAs plan for and make efforts to facilitate *at least* biweekly parenting time (visitation) between the child and the parent or caretaker to whom the child is to be discharged, unless such parenting time (visiting) is specifically prohibited by court order or prohibited by a voluntary placement agreement, or the child is transferred to an Office of Mental Health or Office for People With Developmental Disabilities, or because the appropriateness of the placement makes biweekly parenting time (visitation) an impossibility. This regulation has been widely

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<sup>1</sup> Hess, Peg, *Visits: Critical to the wellbeing and permanency of children and youth in care* (2014). In Hess, P. and Mallon, G. (Eds.), "Child Welfare for the Twenty First century: A Handbook of Practices, Policies and Programs" (pp. 647-662). New York: Columbia University Press.

<sup>2</sup> Smariga, M. (2007). *Visitation with infants and toddlers in foster care: What judges and attorneys need to know*. Washington, DC: American Bar Association and Zero to Three.

<sup>3</sup> 18NYCRR 431.10(e).

<sup>4</sup> Family Court Act §1030(c).

<sup>5</sup> See Jillian Cohen and Michele Cortese, "Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families," *Child Law Practice*, Vol. 28, No. 3 (May 2009); U.S. Department of Health and Human Services, "Family Reunification: What the Evidence Shows," *Child Welfare Information Gateway Issue Brief*, June 2006, pp. 6-7, [https://www.childwelfare.gov/pubPDFs/family\\_reunification.pdf](https://www.childwelfare.gov/pubPDFs/family_reunification.pdf).

interpreted as permitting a *maximum* parenting time (visitation) of once every two weeks, typically for one hour, which means that a child would only see his or her parent for a little over one day (26 hours) per year. **It is important to note that *this regulation establishes a minimum, not a maximum for parenting time for children in foster care.***

The efforts of LDSSs and VAs to facilitate regular and frequent parenting time when safe and appropriate (but at least biweekly) must include the following:

- Provision of financial assistance, transportation or other assistance, which is necessary to enable biweekly parenting time to occur
- Follow-up with the parent or relative when scheduled visits do not occur to ascertain the reasons for missed visits, and to make reasonable efforts to prevent similar problems in future visits
- Arranging for visits to occur in a location that assures the privacy, safety, and comfort of the child and his or her parent and other family members<sup>6</sup>

**2. Initial Visit:** The transition into foster care involves abrupt changes in close relationships and family environments that can be traumatic for both children and parents,<sup>7</sup> so it is important to schedule parenting time as soon as possible after the child is separated from his or her parent(s). This initial interaction serves several purposes, including the following:

- Providing continuity and reassurance for the child
- Supporting the continued exercise of parental responsibilities and obligations
- Giving the parent the opportunity to immediately begin to address the reasons for the agency's removal of the child from the home
- Beginning the process of determining the permanency plan for the child<sup>8</sup>

Unless there is a court order or other exceptions listed under 18 NYCRR 430.12(d)(1)(i) setting out a different timeframe or directing that no visits take place, the initial parent-child contact should occur as soon as practically and logistically possible, preferably within 2-3 days of the child's placement into foster care. Immediate phone contact between parents and children (if the parent has phone access) after a removal can be facilitated by providing the parent's phone number to the foster parent, with prior consent from the parent. Frequent phone or email contact, and Skype, FaceTime or other electronic face-to-face technologies, along with the exchanging of family photos, is encouraged throughout the child's stay in care.

**3. Ongoing Visits:** Unless prohibited or otherwise limited by court order and other exceptions listed under 18 NYCRR 430.12(d)(1)(i), regular and frequent visiting must continue after the initial visit to reduce the trauma of separation, maintain and establish attachment among family members, and promote parent and child engagement in the permanency planning process. Generally, parenting time should take place as frequently as possible. Research suggests that infants and toddlers should see their parent as often

<sup>6</sup> 18NYCRR 430.12(d)(1)(i)(a)-(c).

<sup>7</sup> Monique Mitchell, "Does anyone know what is going on? Examining children's lived experience of the transition into foster care," 32, *Children and Youth Services Review* 437 (2010).

<sup>8</sup> Minnesota Department of Human Resources. *Child and family visitation: A practice guide to support lasting reunification and preserving family connections for children in foster care*. Minneapolis: Minnesota Department of Human Resources (2009). DHS-5552-ENG 1-09. Retrieved March 28, 2017, from <https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5552-ENG>

as possible, and no less than two or three times per week to maintain, encourage, and strengthen the parent-child bond<sup>9</sup> Additionally, special consideration must be given to accommodating mothers who are breastfeeding.

LDSSs and VAs should assist with arrangements for parents to participate in their child's medical visits, educational and special events, and other occasions.

**4. Location of Parenting Time:** As soon as is safely possible, parenting time should take place in the home of the parent (or other suitable home-like setting) or in the community (e.g., public library, park, YW/YMCA, house of worship, etc.).

**5. Weekend and Overnight Visits:** As a general rule, a child should not be trial- or final-discharged without first having experienced successful overnight and weekend visits with the parent over a period of time. For families who are residing in a temporary residence (e.g., a shelter or with relatives or friends), the caseworker should work with the parent and the shelter administration, relative, or friend to develop a plan for overnight visits (which might include, for example, the child staying at the shelter, or a relative hosting the visits).

In cases where the court orders an immediate discharge, the order must be obeyed and implemented accordingly, regardless of whether there have been prior overnight and/or weekend visits, unless the order is stayed or modified.

**6. Scheduling Considerations:** Visiting arrangements must take into consideration the schedules of all those involved, including the parent, child, and foster parent. Caseworkers must factor in obligations the parent may have, such as work schedules, participation in a drug treatment program, medical appointments, job searches, income maintenance appointments, and obligations and responsibilities to other family members. The child's school schedule, extracurricular activities, and commitments to supportive services must also be considered when making scheduling decisions. Caseworkers must consider travel distance and cost, safety considerations for parents in domestic violence situations, and cultural, religious, and language issues. Alternative sites as well as evening and weekend hours should be considered as appropriate. When there is a conflict between the parent's availability and the availability of the foster parent, the agency must arrange for visiting that works for the parent.

**7. Suspension of Parenting Time:** A child in placement has a right to maintain frequent and regular connection with his or her parents, unless the child is freed or parental contact is limited by a court order. Parent-child visits must not be suspended due to a parent's noncompliance with the service plan or poor behavior on the part of the parent, as long as the non-compliance or poor behavior does not compromise the physical and emotional safety of the child or others during visits and has not otherwise been limited or

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<sup>9</sup> See, Smariga, M., *Visitation with infants and toddlers in foster care: What judges and attorneys need to know*, Washington, DC: American Bar Association and Zero to Three (2007); Douglas F. Johnson, Vice President, National Council of Juvenile and Family Court Judges, *Babies Cry for Judicial Leadership*, [http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710\\_reasonable\\_efforts\\_in\\_the\\_dependency\\_court\\_issue\\_0119.pdf](http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710_reasonable_efforts_in_the_dependency_court_issue_0119.pdf) ("Standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency.")

prohibited by court order. Such visits shall also not be suspended or otherwise altered if doing so would be contrary to an order of the Family Court.

When an authorized agency determines to terminate or limit visiting rights between a parent or guardian and the child voluntarily placed in foster care in accordance with Social Services Law §384-a, parenting time (visitation) may not be terminated or limited except by court order in a proceeding in which the parent or guardian was a party.<sup>10</sup> Visitation is to continue until a court order is obtained, except in cases of imminent danger to the child's life, health and safety. In cases of imminent danger of the child's life, health and safety, the authorized agency may terminate or limit parenting time (visitation) without a court order. On the same day visitation is terminated or limited, the authorized agency must commence a court action, and if action is already before the court, shall seek an order of the court as if the child had been taken into protective custody. The above reference provisions do not apply where the parent or guardian had agreed to such limitation in the voluntary placement agreement.

**8. Additional Parenting Time in Special Circumstances:** If a child is experiencing a crisis, the caseworker should arrange additional parenting time; when so doing will not place the child at risk of physical or emotional harm. Examples of such circumstances are:

- The child is hospitalized for a medical or psychiatric reason.
- The child is re-placed into another foster home and is separated from his/her siblings.
- The child has experienced a trauma or crisis in the foster home, school, or place of employment, for example, and would benefit from the support of the parent to process what happened.
- There has been a death in the family.
- A clinician recommends that additional contact would be beneficial for the child to improve his/her relationship with the parent.

### **B. Considering Whether and How Much Supervision and/or Monitoring Is Necessary**

Best practice presumes that parenting time with a child who is in foster care is to be unsupervised unless supervision is warranted. The Family Court Act §1030(c) provides that the court "may order visitation under the supervision of an employee of a local social services department upon a finding that such supervised visiting is in the best interests of the child."<sup>11</sup> In the absence of evidence demonstrating that supervision is in a child's best interest, parenting time for a child in foster care should be unsupervised. When an LDSS or VA seeks a court order for supervised visitation, to assist the judge's decision-making, specific evidence supporting the request should be offered on the record, and should also be entered into CONNECTIONS for use when re-evaluating the level of supervision needed.

Every family situation is different, and the level of supervision a family requires must be determined on a case by case basis, taking into consideration the reasons the child came into care, the child's age, and other family needs. The factors listed below are offered as an aid to LDSSs and VAs in determining the least restrictive level of supervision needed for a particular child. Between closely supervised, agency-based visits and liberal

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<sup>10</sup> 18 NYCRR 431.14.

<sup>11</sup> FCA §1030(c).

unsupervised visits, there is a range of options that should be considered in making that determination.

Determining the degree of supervision is important to maintaining child safety. Unsupervised parenting and family visiting time should be implemented as early as is safely possible to promote healthy, positive connections for the child and the entire family. Parent-child and family contact should occur in settings that encourage the most natural interaction between family members while minimizing any risk that may exist to the child. These gatherings can and should include parental and family participation in normally occurring events in the child's life; for example, school conferences and other school events, medical appointments, church programs, and extracurricular activities. Below are some factors to consider when deciding the least restrictive level of supervision when supervision is deemed appropriate.

### **Factors to Consider in Determining the Least Restrictive Level of Supervision Necessary for Children in Foster Care**

- a) Parenting time and visitation should be supervised only when there are safety issues that may endanger the child's physical or emotional safety. Supervision is appropriate when one or more of the following conditions exist:
  - There is a court order that requires supervised visits.
  - There is reason to believe that the child may be at serious risk of physical and/or emotional harm or injury during the visit.
  - There is reason to believe that the parent may attempt to influence, interfere with, manipulate, or coerce the child's potential testimony in court.
  - There is reason to believe that the parent may abscond with the child.
  - In the presence of the child, a parent has displayed explosive, emotionally uncontrolled behavior toward agency staff or the foster parent(s).
- b) During the supervised visit, the staff is present to help the parent(s) building parenting skills and to respond to the parent's requests for assistance and support.
- c) The person supervising the visit must also assess the safety of the child, paying close attention to the physical contact between the parent and child, as well as the reaction the child has to any physical contact, and verbal or non-verbal communication.
  - The person supervising the visit must be present with the parent and child during the entirety of the visit and, depending on the allegations of the case and/or other safety factors, must be able to hear all communication between the child and parent(s) during the visit.
  - If the child and/or parent speaks a language other than English, an interpreter must be used during the visit.
- d) Whenever possible, supervised visits should take place outside of the agency to promote the parent-child relationship and offer the caseworker the opportunity to determine whether to decrease the level of supervision.
- e) Staff must have a clear safety plan for the visit.

- f) Staff should not stop the visit, except in the following instances:
- If there is imminent danger to the child's life, health and safety, including but not limited to:
    - i. if the parent attempts to leave the visiting area with the child and is not otherwise authorized to do so;
    - ii. if, in the presence of the child, a parent has displayed explosive, emotionally uncontrolled behavior toward agency staff or the foster parent(s); or
    - iii. if the parent is under the influence of drugs or alcohol.
  - If there is a court order authorizing stopping the visit
  - If the parent tried to influence, interfere with, manipulate, or coerce the child's potential testimony for court
- g) Staff should document their observations and assessments of supervised visits in CONNECTIONS for use when re-evaluating the level of supervision needed.
- h) When recommending that a court order supervised visitation that impacts parenting time, the facts supporting the recommendation should be explained to the court with specificity and documented in CONNECTIONS for use when re-evaluating the level of supervision needed.

### **C. Increasing or Decreasing Level of Supervision**

1. The LDSS or VA should regularly assess the continuing necessity for supervision. The level of supervision should be decreased if none of the factors listed above in B.A.1 exist and there are no other determined child safety related issues that would require parenting time be supervised.
2. Visits need not be supervised when there are no safety issues requiring supervision and the child is comfortable being alone with the parent. Whenever consistent with safety and the child's comfort, caseworkers must increase the frequency of parenting time and decrease the level of supervision, as appropriate. Conversely, when safety or risk concerns arise, caseworkers may need to increase the level of supervision of visits. Caseworkers must be attentive to changes whether positive or negative in parental and child behavior patterns once unsupervised parenting times have begun.
3. Before moving to unsupervised parenting time, the caseworker should contact the agency attorney to determine whether the Family Court judge has issued orders regarding visits, whether such order(s) addresses the issue of supervised parenting time and ascertains whether the attorney has any additional information to be considered before moving to unsupervised parenting time. If the caseworker has reasons to change the level of supervision, but a court order prevents the change, the caseworker must address the issue with the agency attorney about modifying the order. The caseworker may not make a change in the visit plan until receiving confirmation from the agency attorney that the court has ordered that the change may proceed except in cases of imminent danger.

4. If there is no court order regarding the level of supervision, the caseworker may increase or decrease the level of supervision on a case, provided that the caseworker consults first with the agency attorney and the case manager. The caseworker must notify the agency attorney, the parent's attorney and the attorney for the child of the modified visit plan.

**Conclusion:** Family visiting plans that meet the child's developmental needs and allow for safe, frequent contact between the child and members of their family must be created for all children in foster care.<sup>12</sup> These visiting plans must include the planned frequency and location of the visits, the name of the child, the names of the persons who are scheduled to visit the child, any arrangements or assistance necessary to facilitate frequent and regular parenting time and family visiting time, and, if supervised visits are planned, the reasons such supervision was deemed appropriate.<sup>13</sup>

#### **IV. Required Action**

LDSSs and VAs will need to assess change readiness and the potential training needs within their agency to successfully implement the principles set out in this ADM. LDSSs will additionally need to assess their relationship with the Family Court regarding court orders. A certain degree of flexibility regarding the level of supervision and frequency of parenting time is necessary to allow for plan adjustments that strive to meet the individual needs of children in foster care and their families. LDSSs and VAs in need of assistance are encouraged to contact their regional office. LDSSs and VAs must develop a written policy, which should also be developed in consultation with relevant stakeholders and made available to families and stakeholders no later than 90 days from the release of this ADM.

#### **V. Contacts**

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

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#### **VI. Effective Date**

Upon release of this ADM.

<sup>12</sup> 18 NYCRR 428.6(a)(2)(viii).

<sup>13</sup> 18 NYCRR 430.12(d)(1).

***/s/ Laura M. Velez***

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**Issued By:**

Name: Laura M. Velez

Title: Deputy Commissioner

Division/Office: Child Welfare & Community Services