



**Office of Children  
and Family Services**

# **Foster Care Practice Guide for Caseworkers and Supervisors**

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**New York State Office of Children and Family Services  
Division of Administration  
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**AND**

**Welfare Research, Inc.**

### **Acknowledgement**

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## Online Resources

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The text of New York State laws, including Social Services Law and the Family Court Act, can be found at:

<http://public.leginfo.state.ny.us/navigate.cgi>

Click on “Laws.” Then click on “SOS” for Social Services Law (SSL) or “FCT” for the Family Court Act (FCA).

The text of New York State Codes, Rules and Regulations can be accessed at:

<http://www.dos.ny.gov/info/nycrr.html>

Click on “View the unofficial NYCRR.” Regulations associated with child welfare are in Title 18, Chapter II, Subchapter C.

Access to child protective services forms used by the New York State Office of Court Administration can be found at:

<http://www.nycourts.gov/forms/familycourt/childprotective.shtml>

OCFS policy directives, including Administrative Directives (ADM), Information Letters (INF) and Local Commissioners Memorandums (LCM) are organized by year at:

<http://ocfs.ny.gov/main/policies/external/>

## References and links

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In this guide, references to laws and regulations are **highlighted** but do not have links. Use the links above to locate the exact text.

Links are **underlined** and will connect you to policy directives and other online sources of information.

**Underlined** links will navigate you to chapters, sections, and appendices within this practice guide.

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## The purpose of this practice guide

This guide is designed to support you in your practice as a foster care caseworker or supervisor. It is a resource that can be used by those who are new to this area of child welfare, as well as by those with years of experience. Here you will find the relevant laws, regulations, and policy and practice guidance that govern how foster care is provided in New York State.

In addition, this guide is designed to give you the information you need to be successful in your interactions with children, their birth families, foster parents, and other child welfare and legal professionals. It is based on the overall vision outlined in the OCFS Child Welfare Practice Model: that children, families, and adults are protected and supported to achieve safety, permanency, and well-being.

The **outcomes** defined by the Child Welfare Practice Model include:

*Safety:* Children are safely maintained in their own homes, families, and communities with their connections, culture, and relationships preserved.

*Prevention:* Through effective intervention, parents, caregivers, and families improve their ability to develop and maintain a safe, stable environment for themselves and their children.

*Permanency:* When it is necessary to place children in out-of-home care, it is a safe, short, and stable experience concluding with permanent attachments to caring adults.

*Well-being:* Children are cared for in safe, permanent, and nurturing environments that meet their needs and develop their physical, cognitive, behavioral/emotional, and social functioning. As youth transition to adulthood, they benefit from services that promote healthy development, academic success and/or self-sustainability, and safe living conditions.

*Organizational Effectiveness:* Child welfare organizations are diverse, flexible, professionally and culturally competent; use child-centered, family-focused practice; and demonstrate partnership at all levels.

The **values** shared by child welfare staff are:

- We believe children and adults have the right to be safe, and to have permanent families and lasting relationships.
- We listen first, then learn and proceed with knowledge, focusing on individual and family resources and strengths.
- We believe that services for children, families and adults must be individualized and culturally competent, recognizing and honoring differences in traditions, heritage, values and beliefs.
- We approach our work with a sense of urgency and persistence, recognizing and respecting a child and family's sense of time.
- We believe that high-performing supervisors and caseworkers are key to building and sustaining an effective child welfare system.
- We value interagency collaboration.

- We believe in accountability for action and results.
- We strive for data-informed decision making.
- We value the principles of partnership:
  - Everyone desires respect.
  - Everyone needs to be heard.
  - Everyone has strengths.
  - Judgments can wait.
  - Partners share power.
  - Partnership is a process.

The following **core competencies** for child welfare staff are fundamental to the implementation of a child-centered, family-focused practice model:

- Strength-based family engagement
- Written and verbal communication
- Collaboration
- Interviewing skills
- Assessment
- Service planning
- Intervention
- Critical thinking
- Cultural competence
- Facilitation skills
- Transitional supports

Eight key **child welfare practices** are intended to achieve outcomes and demonstrate the values and core competencies listed above:

- Engage families
- Engage youth and provide normative experiences
- Strengthen caregiver capacity to protect and provide for children
- Facilitate safe out-of-home placements and rapid permanency
- Develop a trauma-informed system
- Support a racially equitable and culturally competent system

- Address individual family needs through comprehensive assessments
- Develop organizational effectiveness

## Chapter 1: Overview of Foster Care

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# Chapter 1

## Overview of Foster Care

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Foster care is provided to children and families when children must be removed from their homes because their parents or guardians are not able to provide the care they need for their safety and well-being. Foster care is intended to provide safe and stable out-of-home care for children until they can be either be safely returned home or placed in another planned permanency arrangement.<sup>1</sup>

While each foster care case is unique, most follow the same general path, with several decision points along the way. Chapters and sections of this guide roughly follow the order of events in a foster care case, from the child's entry into foster through his/her discharge from the system. Foster care workers have unique responsibilities at each stage.

See [Appendices 1-A](#) and [1-B](#) for summaries of state and federal legislation that affect the provision of foster care in New York State.

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<sup>1</sup> Children's Bureau. (2012). "Title IV-E Foster Care," Administration for Children and Families. Accessed at <https://www.acf.hhs.gov/cb/resource/title-ive-foster-care>

## A. Roadmap of a typical foster care case

### 1. Entry into foster care

Children are most often placed in foster care due to allegations of abuse or maltreatment on the part of their parents or caregivers. Foster care placements also can occur for other reasons. If a child has been adjudicated by the court as a person in need of supervision (PINS) or a juvenile delinquent (JD), he/she may be temporarily placed in foster care for rehabilitation and treatment. A child may be placed in foster care after being found by a court to be a destitute child. In addition, a parent may request voluntary placement or surrender of their child in foster care if the parent feels they cannot properly meet the needs of the child.

For more information on how a child enters foster care, see [Chapter 2](#) of this guide, “Entry into Foster Care.” “Foster Care Proceedings in Family Court” are summarized in [Chapter 3](#).

### 2. Selection of placement setting

When children are placed in foster care, their legal custody is transferred to the commissioner of the local department of social services (LDSS) in which they reside. This means that the LDSS has the full responsibility for their safety and well-being. Children in foster care can live in a variety of settings, including foster family boarding homes, agency-operated boarding homes, supervised independent living programs (SILPs), group homes, group residences, and institutions.

Foster care workers play a key role in identifying the appropriate setting for children placed in care. At this point, the focus should be on the child’s needs as identified by the child if able; child protective services (CPS); the child’s birth parents; and/or the court. Communication is essential among child welfare workers who function in areas related to home finding, foster care, child protective services, and preventive services.

For more information on placement choices, see [Chapter 4](#) of this guide, “Foster Care Placement Options” and [Chapter 9](#), “Residential Care,” for details on group and residential care.

### 3. Setting of permanency planning goal

Foster care is intended to be temporary and brief. A Permanency Planning Goal (PPG) is determined for each child entering foster care. The first goal, in most cases, is to safely return children to their parents or caregivers. When a return home is determined to be unsafe for the child, another permanent arrangement is set. Other arrangements include:

**Legal custody or guardianship.** Either relatives or non-relatives can petition the Family Court for guardianship or legal custody of a child in foster care. Custody is transferred from the LDSS to the guardian or legal custodian. Birth parents’ rights are not terminated, but a guardianship or legal custodian relationship is often a permanent placement. Some relatives and certain non-relatives who have a connection to the child and who assume guardianship of the child may be eligible for assistance from the state under the Kinship Guardianship

Assistance Program (KinGAP). For details on conditions of eligibility, see [Appendix 1-A](#) of this guide.

**Adoption.** A child is considered to be “freed for adoption” when the birth parents’ rights have been terminated or surrendered, or when the legal parent(s) have died. The adoption process includes a home study and approval of potential adoptive parents by the LDSS or voluntary authorized agency (VA), which determines the best match between child and adoptive parent. Most children adopted from foster care in New York State are adopted by their foster parents.

**Another Planned Permanent Living Arrangement (APPLA).** When reunification, adoption, or guardianship are not viable options, and a youth is 16 years of age or older, he/she can be assigned the PPG of Another Planned Permanent Living Arrangement (APPLA) with permanency resource. When the goal of APPLA is selected, youth must be provided with resources to help them develop skills they need to more easily transition into adulthood, and to be a source of support throughout their lives. APPLA is not available as a PPG for youth under the age of 16.

**Adult Residential Care.** This option may be the best arrangement for children with needs that require specialized services and who cannot be returned home, adopted, or placed with a relative.

For more information on “Permanency Planning Options,” see [Chapter 6](#) of this guide.

## 4. Provision of services to children and families

The services to be provided to the child in foster care and his/her birth family are documented in the Family Assessment and Service Plan (FASP), which is updated every six months. This gives foster care agency staff the opportunity to assess the effectiveness of the services, document the family’s progress, and propose any changes in the Service Plan. In this guide, see [Chapter 11](#), “Services for Children in Foster Care” and [Chapter 12](#), “Family Engagement and Services.”

## 5. Discharge from foster care

Discharge from foster care involves individualized planning and preparation of both the child and the permanency resource to which he/she will be discharged. Depending on the child’s PPG, appropriate discharge planning may include transition services, ongoing services to the birth family, assistance for adoptive parents, and appropriate medical care for children with special needs. For details, see [Chapter 13](#) of this guide, “Discharge from Foster Care.”



**Practice Tip:**  
*Things to keep in mind along the way*

The many actions required during specific phases of a foster care case will be discussed in detail in this guide. The overall principles of safety, permanency, and well-being for every child should guide your activities throughout the life of a case.

**Safety**

Assess safety every time you are in contact with children in foster care. On-site safety assessments can be done by visually observing or by speaking with the child, birth parents, relatives, foster parents, or VA staff. If you suspect that a child's safety is at risk when he/she is in foster care, follow procedures outlined in [Chapter 10](#) of this guide.

**Permanency**

Permanency should be considered from the moment children are placed into care. Efforts must be made to achieve a permanent home for the child as quickly as possible, while maintaining the child's safety. Caseworkers need to focus on permanency early in the case through activities such as concurrent planning, diligent efforts to identify relatives who could potentially be permanency resources, and ongoing discussions with the child about permanency options, if age-appropriate.

**Well-being**

Children's well-being, or lack thereof, can be manifested in their physical, behavioral and mental health; academic performance; and relationships with peers and other people in their lives, including foster parents. While a child in care may be physically safe, traumatic experiences before and during placement can have long-lasting effects. Monitor a child's well-being by regularly communicating with the child, the foster parents, service providers, school teachers, and others who come into contact with the child.

## B. Who provides child welfare services?

The provision of foster care is one part of the child welfare continuum in New York State. Other services that may be available to children and families include preventive services, child protective services (CPS), adoption services, and kinship guardianship assistance.

### 1. Case management/planning roles

A number of individuals and agencies must work together to strengthen and support children and families. Within an LDSS or VA, the case manager is responsible for the authorization of services. The case planner assesses the need for specific services and develops a Service Plan with the family. Caseworkers may provide or monitor the provision of services through casework contacts. There may be multiple caseworkers from multiple agencies providing services to the same family.

Every child welfare case in New York State must have an assigned case manager and a case planner. There can be only one case manager and one case planner for each case, although the same person can be assigned both roles. There may be additional caseworkers assigned to a case who are neither the case manager nor the case planner. This usually occurs when there is more than one agency and/or multiple programs within an agency providing services to the same family. Coordination among the case manager, case planner, and caseworkers is essential for effective service delivery to a family. Ongoing coordination, along with communication, keeps everyone informed of roles, responsibilities, and progress on the case and helps avoid duplication of efforts.

#### a. Case manager responsibilities

The case manager is an employee of an LDSS who is responsible for authorizing the provision of services, approving the client eligibility determination, and approving Family Assessment and Service Plans [18 NYCRR 428.2(a)(b)]. The only current exception to this requirement is the Improved Outcomes for Children (IOC) program operated by the New York City Administration for Children's Services (ACS). IOC allows the delegation of the case manager role to nonprofit agencies that have contracts with ACS to provide preventive and foster care services [SSL §153-k(4)(c)].

State regulations require the case manager to:

- Determine eligibility for services
- Develop a plan of service, on the basis of an evaluation or reevaluation of the family's situation, for the purpose of achieving an identified service goal
- Authorize the scope, type, and duration of services to be provided
- Assess the quality and appropriateness of services provided
- Maintain recipient and services information
- Submit reports as required [18 NYCRR 403.4(a)]

In general, the case manager assigns responsibilities for case planning and makes sure that all participants in the case are actively involved in the assessment and service planning functions. This is especially important when services overlap or when a case is being transferred from one service area to another. The use of Service Plan Review conferences is an excellent way to facilitate communication and coordination among service providers.

### **b. Case planner responsibilities**

The case planner, who may be employed by either the LDSS or a VA, has the primary responsibility for providing, coordinating, and evaluating the provision of services to the family. Case planning includes:

- Referring the child and family to providers of services as needed
- Delineating the roles of the various service providers
- Documenting client progress and adherence to the service plan by recording in the uniform case record that such services are provided
- Making casework contacts or arranging for casework contacts [\[NYCRR 18 428.2\(c\)\]](#)

The case planner is the author of the FASP and is responsible for the entirety of its contents and the timeliness of its submission for approval by the case manager. This means the case planner must coordinate all documented work done by other workers who contribute to the FASP, and either approve or revise it, as needed. The case planner also must require collaboration among all the case workers assigned to the case so that one FASP is developed.

There may be more than one individual performing case planning activities for a family. For example, a contracted preventive services provider may be working with the family, or Child Protective Services may have its own case planner or CPS monitor. There can be only one case planner assigned to the case in CONNECTIONS (CONNX) at any given time. If no case planner role has been assigned, the case manager assumes the duties of the case planner.

### **c. Caseworker responsibilities**

Caseworkers may be employed by an LDSS or a VA. In general, caseworkers are assigned to carry out specific functions in a child welfare case.

Caseworkers in Child Protective Services investigate reports of child abuse or maltreatment, assess child safety and risk, and determine what actions are necessary to protect children and youth. Homefinders are caseworkers who are responsible for recruiting, certifying, approving, and retaining foster family boarding homes that will meet the needs of their communities.

When a child is placed in foster care, caseworkers are responsible for finding safe and suitable homes for children as quickly as possible. These responsibilities include:

- Identifying relatives and other suitable adults who are able and willing to care for the child on either a temporary or permanent basis
- Arranging for the provision of services to meet any identified medical, behavioral, or educational needs the child may have
- Informing and working with the child's family, non-respondent parents, and relatives with the goal of making it possible for the child to be returned home safely
- Maintaining casework contacts with the foster family, the child in care, and the child's family
- Arranging for services and/or training to support foster parents, if needed
- Communicating with other child welfare workers, such as CPS and homefinders, about any developments in the case that affect the child's safety or the foster family's ability to care for the child
- Arranging for visits between the child and his/her parents, siblings, and other relatives as permitted by the court
- Working with the case planner and case manager to establish the best permanency planning goal for the child, while planning concurrently for alternative goals
- Preparing permanency hearing reports and attending permanency hearings in Family Court
- Continually documenting case developments in the FASP and progress notes. More than one caseworker may be assigned to contribute information to the FASP and complete progress notes. If they are associated with a child, they complete specific work related to that child within the FASP
- Supporting foster families when a child is removed from the home or is discharged from foster care
- Preparing children and youth for discharge from foster care, including the transition from foster care to adulthood

## C. Structure of the New York State child welfare system

In general, child welfare services in New York State are supervised at the state level and administered at the local level. This means that foster care and other services are provided by 58 LDSSs and the St. Regis Mohawk tribe. The five boroughs of New York City comprise one LDSS, which is administered by the city's Administration for Children's Services (ACS).

### 1. Office of Children and Family Services

The New York State Office of Children and Family Services (OCFS) home office is near the State Capitol in Rensselaer, N.Y. The agency is responsible for programs and services involving foster care, adoption, child protective services, preventive services for children and families, services for pregnant adolescents, and protective programs for vulnerable adults. OCFS is also responsible for the functions performed by the State Commission for the Blind and coordinates state government response to the needs of Native Americans on reservations and in communities.

OCFS provides oversight and monitoring of regulated child care (family day care, group family day care, school-age child care and day care centers outside of NYC), legally exempt child care, child care subsidies, child care resource and referrals, and a range of services and programs for infants, toddlers, preschoolers, and school-age children and their families.

OCFS is responsible for all elements of the state's juvenile justice programs, including the administration and management of programs for juvenile delinquents and juvenile offenders placed in the custody of OCFS. The agency operates 12 residential facilities, which include one reception center, four secure facilities, five limited-secure facilities, and two non-secure facilities for youth placed in the custody of OCFS by family and criminal courts. In addition, OCFS oversees the provision of services to youth and their families, working closely with LDSSs and county youth bureaus. OCFS also serves as the Title IV-E single state agency responsible for the foster care assistance, adoption assistance, and KinGAP in New York [SSL §406]

The state's foster care program is overseen by the OCFS Division of Child Welfare and Community Services (CWCS). Staff at the home office are responsible for:

- Supervising the activities of LDSSs and VAs [SSL §§20, 34]
- Conducting inquiries related to OCFS responsibilities [SSL §34]
- Implementing OCFS policies [SSL §§17, 20]
- Licensing, inspecting, and supervising residential facilities caring for abandoned, abused, neglected, delinquent, and dependent children [SSL §§460-b, 460-c]

### 2. OCFS Regional Offices

There are six Regional Offices (RO) that provide administrative and technical support to LDSSs and VAs in their geographic areas (Albany, Buffalo, New York City, Rochester, Spring Valley, and Syracuse). Regional Office contact information is available on the OCFS website at [http://ocfs.ny.gov/main/regionaloffices\\_main.asp](http://ocfs.ny.gov/main/regionaloffices_main.asp). Their duties include:

### **a. Certification of residential facilities**

OCFS RO staff are directly involved in the certification of residential care facilities. See [Chapter 9](#) of this guide, “Residential Care Facilities.” Staff assigned with certification responsibilities:

- Conduct inspections
- Review and approve or deny any applications for new programs
- Forward any necessary information to OCFS home office
- Provide residential facilities technical assistance related to regulation, law, or policies.

LDSSs and VAs are directly responsible for foster boarding home certification, approval, and oversight, including training for foster parents. ROs offer technical assistance on an as-needed basis by answering questions or addressing serious complaints about a particular foster board home. For more information on the certification or approval of foster boarding homes, refer to [Chapter 7](#) of this guide, “Foster Family Boarding Homes.”

### **b. Technical assistance for LDSSs and VAs**

RO staff serve as liaisons between the home office and the LDSSs and VAs in their areas. Each LDSS and VA is assigned a designated RO staff person, referred to as county or agency leads. The leads offer support and technical assistance such as:

- Reviewing performance data and assisting with the continuous quality improvement/county planning process
- Answering specific technical assistance requests from LDSSs and VAs
- Offering CONNX implementation support by providing assistance on system functionality and how it supports practice
- Identifying specific training needs in the region or in a county and forwarding training requests to the home office
- Answering questions related to federal and state laws, regulations, and policies
- Disseminating pertinent child welfare information from appropriate sources
- Addressing local questions/concerns related to adoption policy and accessing adoption-related resources
- Review of county child welfare plans and county recruitment and retention plans
- Provide oversight and technical assistance for fatality reports and reports of abuse and maltreatment in foster boarding homes

### **c. Assistance to the Justice Center**

The New York State Justice Center for the Protection of People with Special Needs (Justice Center) is charged with “supporting and protecting the health, safety, and dignity

of all people with special needs and disabilities through advocacy of their civil rights, prevention of mistreatment, and investigation of all allegations of abuse and neglect so that appropriate actions are taken.”<sup>1</sup>

If there is an allegation of abuse or maltreatment of a child who has been placed in a residential facility or institution, RO staff may be requested to provide assistance to Justice Center staff in conducting an investigation. For more information on the Justice Center, visit the Justice Center website at [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov).

#### **d. Oversight and monitoring**

Regional Offices play the lead role for OCFS in providing the oversight necessary so statewide standards are maintained in child welfare services, including child protective services. Periodic reviews of case practice are one means by which OCFS, the LDSS and/or VA can identify strengths and areas in need of improvement. The LDSS or VA can then address identified issues, with technical assistance provided by the Regional Office.

##### *Safety and Permanency Assessment (SPA)*

Safety and Permanency Assessments (SPAs) are conducted every four years, typically in LDSSs that have a high percentage of children in foster care. The SPA is led by the Regional Office and is conducted in partnership with CWCS home office staff and the LDSS. The assessment includes a review of foster care case records, focusing on compliance with state laws and regulations, as well as best practices. SPAs provide an opportunity to review not just individual cases, but also systemic practices. The purpose of the SPA is to inform the LDSS about areas needing improvement as well as areas of success.

##### *Voluntary Agency Review (VAR)*

These reviews are generally conducted every three years by Regional Office staff with staff of VAs. Regional Offices gather information from case records; onsite inspections; and interviews with youth, families, and VA staff. As with the other reviews, the focus is on regulatory and statutory compliance along with best practice. The purpose of the process is to inform the VA about areas needing improvement as well as areas of success.

All three types of reviews culminate in the development of a Practice Improvement Plan (PIP) by the Regional Office and the LDSS or VA. The plans lay out the activities the LDSS or VA will undertake to bring their work into alignment with any statutory, regulatory, and/or practice issues that were identified in the review. Mapping out program improvement activities is done collaboratively and may also incorporate input from other partners. The stakeholders may choose to use new, emerging, or existing strategies to address identified opportunities for improvement. PIPs help inform the work of all agencies involved in the improvement in the safety, permanency, and well-being of children in New York.

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<sup>1</sup> New York State Justice Center for the Protection of People with Special Needs. (n.d.) “Statement of Vision, Mission, Values and Guiding Principles.” Accessed at <https://www.justicecenter.ny.gov/about/vision>.

### 3. Role of Local Departments of Social Services (LDSSs)

Most of the functions and responsibilities outlined in this practice guide are carried out at the LDSS level. Some of the responsibilities related to foster care include:

- Investigating complaints of child abuse and maltreatment
- Removing a child from his/her home if it is deemed necessary to maintain the safety of that child
- Bringing cases of alleged child abuse and neglect before Family Court for adjudication, when necessary, and instituting proceedings against a parent or adult, when necessary
- Offering preventive services to potentially avoid the placement of a child into foster care
- Petitioning the Family Court for custody of the child, if he/she cannot be safely cared for in the family home
- Placing a child in a foster care setting, based on the needs of the child and the least restrictive, most homelike setting that is appropriate for the child
- Returning a child to his/her family when they can provide a safe and stable home environment
- Discharging a child to other permanency resources, such as adoption, when a safe return home is not possible [SSL §§395, 397 and 398].

### 4. Role of voluntary authorized agencies (VAs)

An LDSS may contract with a VA to care for children placed in foster care and their families. Voluntary agencies can:

- Operate agency foster boarding homes, group homes, supervised independent living programs, group residences and institutions [SSL §§374-b(1) (3), SSL 374-c and 460-b; 18 NYCRR 441, 442, 447, 448, and 449]
- Certify or approve foster homes [SSL §376, 18 NYCRR 443]
- Provide non-residential services such as preventive services under contract with a local district [SSL §409-a, 18 NYCRR Part 423]

If a child is placed with a VA, the VA is responsible for providing care and services to that child while adhering to OCFS standards and requirements.

## Chapter 2: Entry into Foster Care

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## Chapter 2

# Entry into Foster Care

The majority of children are placed into foster care as the result of an investigation by Child Protective Services (CPS). These placements are necessary when CPS determines that a child's life or health is in imminent danger if he/she remains in the home [SSL §417] and it has not been possible to place the child with a noncustodial parent, relative, friend, or neighbor.

A child may also enter foster care in relation to a CPS case when the Family Court places the child in the care and custody of the LDSS following a fact finding that he/she is being abused or neglected.

The child's case record must clearly describe the steps taken to avert the need for placement [18 NYCRR 428.6(a)(2)], including:

- Preventive services considered, offered, or provided to protect the child while at home, or to support the parent/caretaker.
- Steps taken to identify, locate, and engage absent parents, relatives, or other family resources as alternative caretakers, and to determine their availability, willingness, and suitability to care for the child. Include a description of why these alternatives to placement were either:
  - Refused by the parent, relative or potential resource;
  - Not available;
  - Tried but unsuccessful, or
  - Not sufficient to support safety at this time.

When CPS determines that a child must be placed in foster care, the case record in CONNX will be documented as *Indicated; Case Open – CPS Required*. This means that CPS has determined that serious safety factors and/or risk issues exist in the home that require court-ordered CPS placement, court-ordered services, and/or supervision.

Some children are placed in foster care as the result of an adjudication of being a Person in Need of Supervision (PINS), a juvenile delinquent (JD), or a destitute child by the Family Court.



### **Practice Tip:** *CPS Program Manual*

If you need more information about New York's Child Protective Services Program and its relationship to foster care, please refer to the [Child Protective Services Program Manual](#).

The purpose of that manual is to provide a comprehensive resource that incorporates current law, regulation, relevant guidelines, and procedures in the area of child protective services. The online manual includes a detailed table of contents and 15 chapters, all accessible as Portable Document Format (PDF) files.

In addition, children may come into care because their parents have surrendered guardianship and custody. A parents or legal guardians also may sign a voluntary placement agreement transferring care and custody of children to the LDSS. Voluntary placement may be necessary due to circumstances such as the loss of a home or temporary incapacitation of the parent or guardian. It does not terminate the parents' or guardians' rights and is solely for the purpose of placing children in temporary foster care [SSL §384-a] with the permanency goal of reunification.

## A. Removal of a child from the home

If CPS determines that a child must be removed from his/her home to keep him/her safe, there are several ways this can happen: removal with consent, removal without consent, and emergency removal. The court also can order the removal of a child from the home.

### 1. Removal with consent

If CPS suspects that a child is being abused or neglected, or if the child is in imminent danger of being abused or neglected, a parent or other person legally responsible for the child may give written consent for the child's removal from the home.

Before removal, the consent form must be read by and explained to the child's parent(s) or other persons legally responsible. It must be clear that they understand the terms of removal before they sign the form. At the time of removal, the caseworker must give written notice to the parent or other person legally responsible of their right to apply to the Family Court for the return of the child and of their right to be represented by counsel.

The notice of parents' rights must include the name, title, organization, address, and telephone number of the person who is removing the child; the name, address, and telephone number of the authorized agency to which the child is being taken, if available; and, where possible, the telephone number of the person to be contacted regarding visits with the child. Unless the child is returned sooner, a petition must be filed within three court days of removal, and a hearing must be held in Family Court no later than the next day after the petition is filed [FCA §1021].

A removal with consent is not the same as a voluntary placement under §SSL 384-a.

See [Appendix 2-A](#), "Consent for Temporary Placement of Child in Foster Care."

### 2. Court-ordered temporary removal without consent

When removal is determined to be necessary, and the parent refuses to consent to removal of the child, the parent is unavailable, or there is not enough time to file an abuse or neglect petition, the LDSS must file an application for pre-petition temporary removal with the Family Court [FCA §1022(a)(i)]. When such an application is made, the LDSS must make every reasonable effort, with due regard for any necessity for immediate protective action, to inform the parent or other person legally responsible for the child's care of the intent to apply for the order and the date and location of the court where the petition has been filed [FCA §1023]. See [Appendix 2-B](#), "Model Family Court Act Section 1023 Letter."

The court is required to place the application on its calendar on the same day it is received and must issue a written order no later than the next court day after the removal of the child [FCA §§1022(a)(ii) and (vii)]. Except for good cause shown or unless the child is returned sooner, an Article 10 petition must be filed within three court days of the issuance of the order directing temporary removal [FCA §1022(b)].

### 3. Emergency removal without consent or court order

If CPS has reasonable cause to believe that there is an imminent danger to the child's life or health, and there is not enough time to apply for a temporary removal order, the worker may take protective custody of the child without the consent of the parent or person legally responsible for the child's care and without a court order [FCA §1024].

Emergency removal of a child without a court order should only be used in the most urgent circumstances of grave danger to the life or health of the child. An emergency removal should only be used when a child is in imminent danger and there is not enough time to apply for a court order pursuant to FCA §1022, such as on a weekend or evening when the court is not open or when it is too late in the day to prepare and file an application with the court.<sup>1</sup>

When an emergency removal is necessary, CPS must bring the child immediately to a place approved for such purpose by the LDSS. Every reasonable effort must be made to communicate the child's whereabouts to the parent or other person legally responsible for the child.

If the child was removed via an emergency removal, and CPS later determines that there is no imminent danger to the child, the child should be returned to the home, unless the case involves abuse [FCA §1026]. However, if CPS determines there *is* imminent danger to the child, only the court may determine that the child should be returned. If the case involves abuse but CPS determines that there is no imminent danger, CPS may recommend to the court that the child be returned home, but again only the court may determine that the child should be returned [FCA §1026(a)].

If the child is not returned, CPS must file the petition the next court date after the child was removed or immediately petition the court for an extension of the time period to file a petition. This extension may be granted only upon good cause shown and may be for no more than three court days from the date of the initial removal. A hearing must be held no later than the next court date after the petition is filed [FCA §1026(c)].

#### **a. Removal hearing**

Whenever a child is removed from the home without a court order, the Family Court must hold a hearing no later than the next day after the filing of an abuse or neglect petition to determine whether the child requires protection. The hearing, which is sometimes called a 1027 hearing (because it is held under Section 1027 of the FCA), must include consideration of whether the child should be returned to the parent or other person legally responsible pending a final order of disposition on the matter in the petition. The hearing must continue on successive days until a decision is made [FCA §1027(a)(i)].

At the hearing, it is the CPS's burden to show that the life or health of the child would be in imminent risk if left with the parent. If imminent risk is not proven, the child is returned to the parent pending a dispositional judgment or further order of the court. The rules of evidence for this type of hearing are different in some respects than the rules for other

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<sup>1</sup> OCFS "Summary of New York State Court of Appeals Decision, *Nicholson, et al. v. Scopetta, et al.*" ([04-OCFS-LCM-22](#)).

types of court proceedings. The evidence must be material and relevant, and hearsay is permitted in some circumstances [FCA §1046].

## B. Other court-ordered placements

The Family Court may also order that a child be placed in foster care as the result of proceedings under [Article 3](#) (Juvenile Delinquency), [Article 7](#) (Persons in Need of Supervision), or [Article 10-C](#) (Destitute Children) of the [Family Court Act](#).

### 1. Juvenile Delinquent (JD)

A juvenile delinquent is defined as a child who is at least 7 years old but younger than 16,<sup>1</sup> who has committed an act that would be a crime if he/she were an adult [[FCA §301.2\(1\)](#)]. The JD petition is filed by a presentment agency, which is either the corporation counsel for New York City, a county attorney, or a district attorney [[FCA §254, 254-a](#)].

If the youth has been adjudicated to be a JD the court has the option to place the child into custody of OCFS or an LDSS. If the respondent committed a felony, the initial placement may not exceed 18 months. If the respondent committed a misdemeanor, the initial placement may not exceed 12 months. Under certain conditions, the respondent may receive credit or time spent in detention.

For more detailed information, see [Chapter 3](#) of this guide, “Foster Care Proceedings in Family Court,” Section D.

### 2. Person in Need of Supervision (PINS)

A Person in Need of Supervision (PINS) is defined in the Family Court Act [[FCA §712\(a\)](#)] as a person less than 18 years old who requires supervision by the court.

PINS petitions may be filed by law enforcement, the person legally responsible for the child, a person who has been injured by the child, a school, or an authorized agency. A PINS petition may be filed as a substitute for a JD petition [[FCA §733](#)].

When a person is adjudicated to be a PINS, the judge may place the youth in the custody of the LDSS for up to 12 months, with a one-year extension if approved by the court [[FCA §756, 756-a](#)]. If there is a case already open for the child or his/her family, the PINS adjudication would be added in the Progress Notes of the child’s case record and a revised Family Assessment Service Plan (FASP) must be completed [[18 NYCRR 428.7\(b\)](#)]. If there is not an open case, the caseworker must open a case record in CONNX.

For more detailed information, see [Chapter 3](#) of this guide, “Foster Care Proceedings in Family Court,” Section D.

### 3. Destitute child

A destitute child is defined as a child under the age of 18 who is in a state of want or suffering due to a lack of sufficient food, clothing, shelter, or medical or surgical care. The child does not fit the description of an “abused” or “neglected” child, as defined by Section 1012 of the Family Court Act, but is without any parent, caretaker, or guardian, to sufficiently care for him/her [[FCA §1092\(b\) and \(c\)](#)].

<sup>1</sup> This age will increase to 17 years on Oct. 1, 2018 and to 18 years on Oct. 1, 2019.

Under Social Services Law, destitute children may also be:

- A child under the age of 18 who is a runaway or homeless
- A person who is a former foster care youth under the age of 21 who was previously in foster care, was discharged from foster care due to a failure to consent to the continuation in placement, and who has returned to foster care [SSL §371(3)]
- Other examples of destitute children include:
  - Orphans
  - Children whose parents, guardians, or custodians cannot be located
  - Children whose parents or guardians are suffering from mental incapacity or are in a coma, and no other adult is able or willing to execute a voluntary placement agreement

Placement procedures and guidelines for destitute children are basically the same as for children placed through Article 10 proceedings.<sup>2</sup> See [Chapter 3](#), “Foster Care Proceedings in Family Court.”



### **Practice Tip: Family Services Intake Stage**

Every child welfare case begins at the Family Services Intake Stage (FSI) in the CONNX system. An FSI can be created by:

- A CPS worker conducting an investigation of a CPS report
- An LDSS or VA worker when a child’s placement is *not* the result of a CPS investigation (a “non-CPS” case).

To create a new FSI, select the “Record FSI” command and the “Intake Source” window appears. This is where you will record source information for the FSI. When the birth parent or legal guardian has voluntarily placed the child in foster care, select “Self” as the source of referral. The information entered here carries over to the Person List window and becomes the case name.

The Case Initiation Date (CID) is created by the system, based on the information entered at the FSI stage. The CID determines the due dates of all Family Assessment and Service Plans (FASPs) that may be filed in connection with the case. If “Date LDSS Received Application Signed by Parent/Client” is selected, the date of the application will appear as the CID when the case progresses to the Family Services Stage (FSS).

Source: “[Getting to Know the Transformed Family Services Intake \(FSI\) State in CONNECTIONS](#),” Build Job Aid, Jan. 1, 2015.

<sup>2</sup> OCFS “Destitute Child Placement Procedures and Guidelines” ([12-OCFS-ADM-08](#))

## C. Determining eligibility for federal funding

When a child enters foster care, it is necessary for caseworkers to determine whether the child and his/her family are eligible for federal funding. New York State receives reimbursement from the federal government for a portion of the cost of providing foster care to eligible children and families.

Why is this important? Many of the standards and requirements for managing foster care cases are based in federal law (see [Chapter 1, Appendix 1-B](#) of this guide). Adherence to these standards enhances safety and promotes permanency for children, and also is necessary for states to receive federal funding. The fiscal consequences of not complying with federal eligibility requirements can be significant to the local district and the community. When federal reimbursement is lost, the financial burden shifts entirely to the state and locality.

Two major federal funding streams are available to LDSSs and VAs that provide foster care.

- Title IV-E of the Social Security Act [[42 U.S.C. §§670-679c](#)] provides for federal reimbursement for a portion of the maintenance and administrative costs of foster care for children who meet specified federal eligibility requirements.
- Temporary Assistance for Needy Families (TANF) and Emergency Assistance to Families (EAF) funding applies to all child welfare services (except adoption), so LDSSs are required to determine TANF-EAF eligibility in all cases that have been opened in CONNX.

Caseworkers who have been assigned responsibility for eligibility determinations must perform Title IV-E and TANF-EAF eligibility determinations in all foster care cases *at the time the cases are opened*. A foster child eligibility checklist [[LDSS-4809](#)] must be completed for each child entering care. A [documentation file template](#) available on the OCFS website provides a list of the documents and authorizations that must be collected. A case that is not eligible for funding under Title IV-E may be eligible under TANF-EAF.

For additional information about federal funding programs, see [Chapter 15](#) of this guide, “Foster Care Eligibility and Financing.”

## Chapter 3: Foster Care Proceedings in Family Court

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## Chapter 3

# **Foster Care Proceedings in Family Court**

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A child's placement in foster care usually must be approved and authorized by the Family Court. The highest number of placements are made under the provisions of Article 10 of the FCA in relation to abused or neglected children.

The court continues to be involved throughout the time the child is in foster care through a series of permanency hearings. The court's involvement ends when the child's permanency goal has been achieved through a return home, adoption, a planned permanency living arrangement with a permanency resource (APPLA), or other arrangement acceptable to the court or the youth reaches the age of 21.

## A. Overview

In New York State, the Family Court hears matters involving children and families, as defined by state law. It also has the authority to order services under certain conditions and to monitor cases to see that the interventions and services provided to the family are as beneficial and effective as possible. Each case in Family Court is given a number, referred to as a “docket number.”

There is at least one judge in each county of the state who hears such matters. In general, the more populated a county, the more Family Court judges there are, including more than a dozen Family Court judges in each of the five boroughs of New York City. Family Court judges may be elected or appointed, depending upon the county government structure.

There may be other courts within some Family Courts, including:

- Family Treatment Court or Drug Treatment Court
- Integrated Domestic Violence Court (IDV)
- Youth Court

### 1. Family Court officials

The *judge* is in charge of the courtroom. Judges listen to witnesses, examine evidence, and decide any legal questions that arise during the proceedings. After this information is presented, they determine the outcome of cases and issue any necessary orders.

The *court referee* is an attorney who is assigned to hear, decide and issue orders in certain types of cases.

The *judicial hearing officer (JHO)* is a former or retired judge who is assigned to hear contested paternity proceedings, custody and visitation proceedings, and family offense matters in the Family Court. JHOs may also be assigned adoptions, permanency hearings, and foster care review cases.



#### **Practice Tip:**

#### ***Who’s who in a Family Court case?***

*Petitioner:* The agency or other person who has filed a petition asking the court for relief.

*Respondent:* The person against whom the petition is filed. In an Article 10 abuse or neglect proceeding, it is the parent, guardian or other person legally responsible for the child. In an Article 3 JD or Article 7 PINS proceeding, it is the child.

*Interested Party Intervenor:* A person other than the respondent or petitioner, usually a relative or noncustodial parent, who has an interest in the case. This person may appear in court proceedings, for the purpose of seeking temporary or permanent custody of the child.

*Person Legally Responsible for the Child’s Care:* A custodian, guardian, or any other person responsible for the child’s care at the relevant time (other than a parent). A custodian can be any person who continually or at regular intervals can be found in the same household as the child, and whose conduct causes or contributes to the abuse or neglect of the child.

*Legal Counsel:* An attorney representing any of the parties in the case. If a respondent is indigent, the court may appoint legal counsel to represent him/her. Counsel for the child is called the *Attorney for the Child*.

Source: A Guide to the New York State Family Court

The *court attorney* is a lawyer who assists the judge with legal research, drafting decisions, and reviewing orders.

The *court clerk* supervises non-judicial personnel, prepares court orders, schedules cases, and ensures the availability of interpreters, among other responsibilities.

A *court officer* is a uniformed guard who maintains order in the courtroom and public areas of the courthouse.<sup>1</sup>

*Interpreters* are provided so that all individuals in Family Court can understand the proceedings. In New York City, as well as in other counties with large Spanish-speaking populations, Spanish language interpreters are usually available in the courthouse. Interpreters may also be available by phone. If an interpreter is not available, the judge may adjourn the case until one is found.

All proceedings in Family Court are recorded. Parties to the court proceedings may request a transcript of the recording but must pay for it. If the proceeding is not recorded, the proceedings may be documented by a court reporter, who will create a verbatim record of the proceedings.

## **2. Parties who may attend foster care proceedings**

Certain individuals and organizations have a right to receive notice of and/or to attend Family Court hearings in regard to their case and to be represented by an attorney. In cases of children in foster care, the parties are the agency with custody of the child, the parent(s) of the child if their parental rights have not been surrendered or terminated, the foster parents, and the child. For notification requirements for permanency hearings, see [Section C.4](#) of this chapter.

### ***a. LDSS with custody of the child***

The LDSS is represented by an attorney in cases involving child abuse or neglect, foster care, termination of parental rights, and persons in need of supervision (PINS). In New York City, the attorney is typically an assistant corporation counsel employed by the Administration for Children's Services (ACS).<sup>2</sup>

A caseworker, working with a supervisor and LDSS attorney, is often responsible for filing petitions, bringing case records to court, testifying at hearings, and making recommendations about future actions concerning the child.

### ***b. Birth/adoptive parent(s)***

The child's birth or adoptive parent(s) are a party to the proceeding, unless the parental rights of the parent have been terminated or voluntarily surrendered. New York State law guarantees individuals living within the state the right to counsel in Family Court matters involving family offense, child abuse and neglect, custody of their children and termination of parental rights. In the Family Court, if a person is entitled to representation

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<sup>1</sup> The Fund for Modern Courts (2005). *A Guide to the New York State Family Court*, Section 3, p. 8

<sup>2</sup> *Ibid.*

under state law and cannot afford an attorney, the court can appoint one [FCA §262]. Attorneys appointed through this plan are frequently referred to as 18(b) attorneys (the law authorizing their assignment is found in Article 18(b) of New York State’s County Law). These attorneys are reimbursed for their services by the state through their local counties.

**c. Non-respondent parent/relatives/other suitable persons**

In any Article 10 proceeding, service of the summons and petition must be made by LDSS upon the non-respondent parent [FCA §1035]. In any Article 10 proceeding where the court determines that a child must be removed from the child’s home, the LDSS must provide written notice of an upcoming Article 10 proceeding to all non-respondent parents, any relatives of the child, including all of the child’s grandparents, all relatives or suitable persons identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant role in the child’s life [FCA §1017]. The notices, at minimum, must inform the non-respondent parents of the opportunity to seek temporary release of the child under Article 10 or custody under Article 6.<sup>3</sup>

**d. Foster parents**

Current foster parents have a right to attend permanency hearings. Former foster parents who cared for a child for a continuous 12-month period also have a right to attend permanency hearings unless the court, on motion of any party or on its own motion, dispenses with notice of the permanency hearing on the basis that such notice would not be in the child’s best interests [FCA §1089(b)]. Current foster parents, pre-



**Practice Tip: Working with your agency’s attorney**

As a caseworker, your goals and those of the attorney assigned to the case should be the same: the safety, permanency, and well-being of the children involved.

You and the attorney will, however, be approaching the case from different perspectives. You are most familiar with the family’s situation and have been closely involved in developing plans with the family, including a permanency plan for the child. The attorney is well-versed in the laws that relate to foster care, the rules and procedures of the court, and in how to present the case to the Family Court judge.

Prior to the date for a court proceeding, meet with the attorney to review the case. If you are not sure who the attorney is, or how to schedule this preparatory meeting, consult with your supervisor. Review the case material carefully and organize written materials in advance of the meeting. One of the responsibilities of the attorney is to help you prepare for the court hearing, including how to present case information and how to testify.

Source: *A Guide to the New York State Family Court*

<sup>3</sup> OCFS “Changes to the Family Court Act Regarding Child Protective and Permanency Hearings, Including Changes Affecting the Rights of Non-Respondent Parents” ([17-OCFS-ADM-02](#))

adoptive parents and relatives providing care to the child, such former foster parents (unless the court dispenses with such notice) must be given written notice about the permanency hearing so that they may have an opportunity to be heard in court. The right to notice and to be heard does not bestow the status of a party to the proceeding upon the former foster parent. Current foster parents will be given a copy of the permanency hearing report that will be filed with the court; former foster parents will not. If the foster parents do not appear at the hearing, they waive their right to be heard. See **Section C** of this chapter.

Foster parents who have cared for a foster child for more than 12 continuous months are permitted as a matter of right, as an interested party to intervene in any court proceeding involving the custody of the foster child [SSL §383(3)].

***e. The child and the attorney for the child***

Children appearing in Family Court have the right to counsel in neglect and abuse, termination of parental rights, persons in need of supervision, juvenile delinquency, destitute child and voluntary placement/surrender proceedings [FCA §249]. A lawyer assigned to represent a child in these cases is known as the attorney for the child.

Prior to 2007, the attorneys for the child were called “law guardians” and their role was to “represent the right and interests of the child.” The court administrative rules were changed in 2007, redefining their title and responsibilities. Today, an attorney for the child is subject to the ethical requirements applicable to all lawyers, *must* “zealously defend the child” where the child is the respondent (JD and PINS), and “zealously advocate the child's position” in other types of proceedings when the child is the subject [Rules of the Chief Judge §7.2].

The attorney for the child must:

- Consult with and advise the child to the extent and in a manner consistent with the child's capacities and have a thorough knowledge of the child's circumstances
- Be directed by the wishes of the child, if the child is capable of knowing, voluntary, and considered judgment, even if the attorney for the child believes that what the child wants is not in his/her best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.
- Advocate a position that is contrary to the child's wishes, when the attorney for the child is convinced that the child lacks the capacity for knowing, voluntary, and considered judgment; or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position [Rules of the Chief Judge §7.2(d)].



***Practice Tip: Court Appointed Special Advocates***

In New York State, 29 counties have Court Appointed Special Advocate (CASA) programs. CASA volunteers are recruited and trained by local program, and then appointed to child welfare cases by the Family Court so that the volunteers can advocate for the best interests of specific children. At the request of the Family Court, CASA volunteers submit written reports to the Court and may attend court hearings, but they are not a party to the proceedings.

For more information about CASA in New York State, see <http://www.casanys.org>.

## B. Article 10 proceedings

When it appears that a child under 18 years of age has been abused or neglected, or is in danger of being abused or neglected, CPS may file a petition asking the Family Court to assist in protecting the child. This is called an Article 10 proceeding, referring to the article number in the Family Court Act that governs child abuse and neglect proceedings

A child protective proceeding is "...designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental and emotional well-being. It is designed to provide a due process of law for determining when the state, through its Family Court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met" [FCA §1011].

### 1. Fact-finding hearing

Child Protective Services (CPS) must prove the allegations of abuse or neglect stated in the Article 10 petition at a fact-finding hearing before a Family Court judge. Only evidence that is material, relevant, and competent may be admitted at a fact-finding hearing [FCA §1046(b)]. A determination that the child has been abused or neglected must be based on a "preponderance of evidence." If it is proven by clear and convincing evidence that the child has been the victim of severe abuse, the finding may be used for a court determination in a subsequent proceeding to terminate parental rights on the ground of severe abuse. [SSL §384-b(8)(d)]

At the fact-finding hearing, CPS may present hospital and agency records, photographs, and other evidence of neglect or abuse, and may produce witnesses. If appropriate, the child may be called as a witness. Sometimes young children may be seen by the judge in "chambers" (the judge's office) instead of in the courtroom. The respondents have the right to cross-examine the witnesses and challenge the evidence produced in court, and to present their own witnesses and evidence.<sup>1</sup>

### 2. Dispositional hearing

If the court determines that abuse or neglect has occurred, it will schedule a dispositional hearing to determine how the case should be resolved [FCA §1045]. The hearing is held before a judge, who must determine what is in the best interests of the child. The standards of evidence and burden of proof are similar to those at a fact-finding hearing.

CPS has an obligation to make *reasonable efforts* to prevent or eliminate the need for removal. The Family Court must determine that such efforts have been made before approving a foster care placement. Caseworkers may be asked by the Court for information and recommendations concerning the child, the family, and probable and/or desirable placement options. At the conclusion of the hearing, the Court will enter one or more of the following types of orders of disposition:

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<sup>1</sup> New York Unified Court System, "Child Protective Proceedings," accessed at [https://www.nycourts.gov/courts/nyc/family/faqs\\_abusedchildren.shtml](https://www.nycourts.gov/courts/nyc/family/faqs_abusedchildren.shtml)

- Suspend judgment
- Release the child to the custody of the non-respondent parent, legal custodian, or legal guardian who are not respondents to the proceeding
- Place the child in foster care
- Place the child into the direct legal custody of a relative or other suitable person under Article 10
- Grant custody or guardianship of the child to a respondent parent, relative or other suitable person
- Make an order of protection
- Release the child to the respondent(s) and place the respondent(s) under supervision

Each of the above orders, other than orders of protection, also may direct the local CPS to make progress reports to the court, the respondent(s), and the attorney for the child on the implementation of the order.

When a court temporarily releases or temporarily places a child with a non-respondent parent, a relative, or suitable person, the court may require the LDSS to begin an investigation of such person's home within 24 hours. The LDSS must report the results of the investigation to the court and the parties, including the attorney for the child. If the LDSS finds the home to be inadequate for the temporary release or placement, its report must include the reasons for that finding.

When the court places the child in care outside of his/her home, the dispositional order must state that continuation in the child's home would be contrary to the best interests of the child and, that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home. This also applies if the child was removed from the home prior to the dispositional hearing [FCA §1052]. A determination that no efforts were reasonable is appropriate in emergency health and safety situations, where continuation in the home presents an immediate danger to the life or health of the child.

The Family Court has continuing jurisdiction over an Article 10 case where the child is placed into foster care until the child is discharged from placement by the court, or until all orders regarding supervision, protection, or services have expired. Foster care placement continues until further orders of the court are issued discharging the child from foster care and until all orders of supervision, protection and services have expired [FCA §1088].

## C. Permanency hearings

Federal and state law require that the Family Courts conduct permanency hearings to review the foster care status of a child and to consult with each child in an age-appropriate manner. State law requires that permanency hearings be held for children in foster care who have been:

- Placed as abused or neglected children [FCA §§1022, 1027 and 1052]
- Placed through a voluntary placement agreement [SSL §384-A].
- Surrendered for adoption [SSL §§383-c and 384]
- Surrendered for adoption [SSL §383-c] and have been determined by a court to be completely legally free for adoption, whether in foster care pursuant to FCA Article 3 (juvenile delinquent), Article 7 (PINS), Article 10 (abused/neglected), or by voluntary surrender
- Placed by the court directly with a relative or other suitable person as an outcome of an Article 10 proceeding [FCA §§1017 and 1055].
- Placed after being determined by the court to be destitute [FCA §1095]

This requirement does not apply to permanency hearings for persons in need of supervision (PINS) and juvenile delinquents (JD) in foster care who are not completely freed for adoption.

While the law does not refer specifically to children who have been placed in foster care as unaccompanied refugee minors, it is OCFS policy that permanency hearings be held for these children to comply with federal requirements that New York afford procedural safeguards to all categories of foster children.<sup>1</sup>

Unless a service plan review will occur within 60 days before each permanency hearing, the caseworker is required to conduct a case consultation with persons otherwise involved in a service plan review to gather information so he or she can complete a timely permanency hearing report. Often this consultation will be a group meeting of all those whose input is necessary, but it may be an individual meeting [18 NYCRR 428.9(b)].

### 1. Permanency hearing dates

Each permanency hearing has a “date certain,” or a specific day set by the court when a permanency hearing will be held. The date certain for the initial permanency hearing is the first removal hearing, or the hearing to approve a voluntary placement agreement or surrender. The date for each subsequent permanency hearing is set at the completion of the previous permanency hearing [FCA §1089(a)].

- The initial permanency hearing for a child placed involuntarily (abuse/neglect/destitute) or voluntarily must be held within eight months of removal. The hearing, which must be completed within 30 days of the day the hearing begins, is held to determine whether the placement should continue and whether the child’s

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<sup>1</sup> New York Unified Court System, “Child Protective Proceedings,” accessed at [https://www.nycourts.gov/courts/nyc/family/faqs\\_abusedchildren.shtml](https://www.nycourts.gov/courts/nyc/family/faqs_abusedchildren.shtml)

permanency plan is still appropriate. The next permanency hearing must be held within six months from the completion of the previous permanency hearing (and every six months thereafter) if the child remains in foster care. The court may designate an earlier date certain for the permanency hearing.

- For non-freed children placed in foster care as PINS or JDs, the permanency hearing must be held within 12 months of the commencement of placement into foster care and every 12 months thereafter [FCA §§355.5 and 756-a].
- When a child is freed for adoption at a court hearing, the date certain for the freed child's initial permanency hearing must be within 30 days of the freeing, unless it is held immediately after the hearing at which the child was freed, provided notice was given to all parties. Subsequent permanency hearings are held every 6 months.



### **Practice Tip: Creating a PHR in CONNECTIONS**

You can generate a PHR from the *Permanency* window in CONNECTIONS. There are three types of PHRs available in the system:

- Individual child (PH-1)
- Multiple children in the same case who are not completely legally freed (PH-2)
- Individual child who is completely legally freed for adoption (PH-3)

Remember that no address information for any of the participants in a permanency hearing (including the child's address and school location) should be included in the PHR. Confidential HIV-related information may be included *only* if all persons receiving the report are authorized to have access to it.

You can select either "pre-fill" or "no pre-fill" for the PHR. Selecting "pre-fill" will produce a document that includes information from the Family Services Stage, including the most recent FASP, Plan Amendments, Removal Updates, and Health and Education modules). If the "pre-fill" option is selected, it is *essential* to review the information for appropriateness and accuracy. Correct any inaccurate information in the PHR, and also locate and correct the underlying inaccurate information in the Family Services Stage.

The report must be kept in draft form until all required reviews have taken place. Once the report is marked as final, it can no longer be edited. It can then be printed and filed with the court. ACS and contract agency staff must upload PHRs to the Legal Tracking System (LTS).

Source: OCFS *Family Assessment and Service Plan (FASP) Guide for Caseworkers*, p. 8-27

## **2. Permanency Hearing Report (PHR)**

State law requires that no later than 14 days before each permanency hearing, the LDSS must file a Permanency Hearing Report (PHR) with the court [FCA §1089(c)]. The contents of the permanency hearing report must include up-to-date, accurate information regarding:

1. The child's current permanency planning goal (PPG) and the anticipated date for meeting the goal. The goal may be:

- Return to the parent or parents;
  - Placement for adoption with the local social services official filing a petition for termination of parental rights;
  - Referral for legal guardianship;
  - Permanent placement with a fit and willing relative; or
  - Placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child if the child is age 16 or older.
2. A description of intensive, ongoing efforts to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent. These efforts may utilize search technology, including social media, to find biological family members.
  3. Steps being taken to monitor that a) the child's foster family home or child care facility is following the reasonable and prudent parenting standard; b) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities; and c) the compelling reasons for determining that it continues to not be in the child's best interest to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative.
  4. The health, well-being, and status of the child since the last hearing, including:
    - A description of the child's health and well-being
    - Information regarding the child's current placement
    - An update on the educational and other progress the child has made since the last hearing, including steps taken to enable prompt delivery of appropriate educational and vocational services to the child. See [Chapter 11](#) of this guide for information about educational services for children in foster care.
  5. A description of the visitation plan or plans, describing the persons with whom the child visits, including siblings, and the frequency, duration, and quality of the visits.
  6. If the child is age 14 or older, a description of the services and assistance that are being provided to enable the child to learn independent living skills.
  7. A description of other services being provided to the child.
  8. The status of the parent, including services that have been offered to the parent, the steps the parent has taken to use the services, any barriers encountered in the delivery of services, and the progress the parent has made toward reunification, and any other steps the parent has taken to comply with and achieve the permanency plan.
  9. A description of the reasonable efforts to achieve the child's permanency goal that have been taken since the last permanency hearing (see next section).
  10. In the case of a child freed for adoption:

- A description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child
  - Information regarding the child's eligibility for adoption subsidy, and
  - If the child is over age 14 and has voluntarily withheld his or her consent to an adoption, the facts, circumstances, and reasons for the child's decision
11. Any recommendations regarding whether the child's current permanency goal should be continued or modified, whether the child's placement should be extended, and whether the visitation plan should be modified.
  12. Anticipated changes in the child's current placement, a discharge, or trial discharge before the next permanency hearing and a description of steps that will be taken to continue to deliver services to the child.
  13. If a child is placed out-of-state, whether this continues to be appropriate, necessary, and in the best interests of the child.

### 3. Reasonable efforts

In the Permanency Hearing Report, the LDSS or VA must describe reasonable efforts to achieve the child's permanency plan that have been taken by the LDSS or VA since the last permanency hearing.

1. Unless the child has been freed for adoption or there has been a determination by a court that such efforts are not required, the reasonable efforts that have been made by the LDSS or VA to eliminate the need for placement of the child and to enable the child to safely return home, including a description of any services that have been provided;
2. Where the permanency plan is adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement other than return to parent, the reasonable efforts that have been made by the LDSS or VA to make and finalize such alternate permanent placement, including a description of any services that have been provided and a description of the consideration of appropriate in-state and out-of-state placements;
3. Where return home of the child is not likely, the reasonable efforts that have been made by the LDSS or VA to evaluate and plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements, and any steps taken to further a permanent plan other than return to the child's parent; or
4. Where a child has been freed for adoption, a description of the reasonable efforts that will be taken to facilitate the adoption of the child.

Under some circumstances, the Family Court can make a finding that reasonable efforts are *not* required. This option is narrowly limited to three categories [FCA §1039-b(b)(1)-(6)]:

**Aggravated circumstances:** The parent has subjected a child to severe and repeated abuse or the parent has abused a child within five years of the child's return from a previous foster care placement as a neglected child; has refused and has failed completely over a

period of at least 6 months from the date of removal to engage in offered services that would allow the child to return home with the parent stating in court of such refusal and unwillingness; or has abandoned a child who is five days old or younger, with the intent of giving up parental rights to the child [FCA §1012(j)].

**Criminal convictions:** This category involves cases where the parent has been criminally convicted of serious violent felony crimes against a child for whom he/she was legally responsible, or against the parent's own child. The crimes include murder or voluntary manslaughter in the first or second degree and attempting, soliciting, conspiring or facilitating the murder or manslaughter of the child. Also included are parental convictions for assault in the first or second degree or the crime of aggravated assault upon a person under 11 years of age where the child sustained serious physical injury.

**Prior involuntary termination of parental rights to a sibling:** This category involves cases where the parental rights of the parent have been involuntarily terminated in the past regarding a sibling or half sibling of the child currently in foster care.

If the court rules that reasonable efforts are not required due to one of the circumstances above, a permanency hearing will be held within 30 days to determine the appropriateness of the agency's permanency plan for the child. The agency must then take steps to finalize the permanency plan, including filing a petition for termination of parental rights, if appropriate.<sup>2</sup>

#### 4. Permanency hearing notices

The caseworker must mail the notice of the Permanency Hearing *and* the Permanency Hearing Report to the following parties no later than 14 days before the date certain for the permanency hearing [FCA §1089(b)(1) &(2)]:

- The child's parent, including any non-respondent parent, unless the parental rights of the parent have been terminated or surrendered
- The parent(s) or other persons legally responsible for the child's care at the most recent address or addresses known to the LDSS or VA
- The foster parent in whose home the child currently resides, if applicable
- The agency supervising the care of the child on behalf of the LDSS with whom the child was placed
- The attorney for the respondent parent
- The attorney for the child
- Any pre-adoptive parent
- Any relative providing care for the child

<sup>2</sup> OCFS. (2010). *Adoption Services Guide for Caseworkers*, Chapter 3.

Only the Notice of the Permanency Hearing must be sent by mail no later than 14 days before the hearing to the following:

- The child, if age 10 or older [FCA §1089(b)(1-a)]
- A former foster parent in whose home the child previously had resided for a continuous period of 12 months in foster care, if any, unless the court dispenses with such notice on the basis that it would not be in the child's best interests [FCA §1089(b)(2)]

## 5. Participation by children in permanency hearings

State law outlines specific requirements for agencies regarding the notification and participation of a child in foster care in his/her permanency hearings. The law also lists specific steps that the attorney for the child and the court must take prior to and during the permanency hearing [FCA §1090-a(b) to (d)].<sup>3</sup>

### **a. Children younger than 10 years of age:**

A child who is younger than 10 years of age may participate in his or her permanency hearing. If a child chooses to participate in his or her permanency hearing, the attorney for the child is not required to make a motion to allow such participation. The court has the discretion to determine the manner and extent to which a particular child may participate in his or her permanency hearing based on his or her best interests [FCA §1090-a(a)(3)].

### **b. Children 10-13 years of age**

A child who wants to participate in his/her permanency hearing may choose the manner in which he/she will participate. This may be participation in person, by telephone or available electronic means, or the issuance of a written statement to the court. The court may, on its own motion or upon motion of the LDSS, limit the participation of a child 10-13 years of age in his/her permanency hearing or limit the child's in-person participation upon a finding that this would be in the best interests of the child.

When making this determination, the court must consider the child's assertion of his or her right to participate and may consider factors including, but not limited to:

- The impact that contact with the other persons who may attend the permanency hearing would have on the child;
- The nature of the content anticipated to be discussed at the permanency hearing;
- Whether attending the permanency hearing would cause emotional detriment to the child; and
- The child's age and maturity/developmental level.

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<sup>3</sup> OCFS "Permanency Hearing Notice and Participation Requirements" ([16-OCFS-ADM-08](#))



### **Practice Tip: Helping children participate in permanency hearings**

Including children in their permanency hearings can empower them by allowing them to have a voice in the decisions being made about and for them. Their involvement may provide the court with vital information to help the court understand the children's view about a variety of issues that directly affect their lives. Ultimately, this may help achieve better and timely outcomes for children and families.

In order for their experience to be positive, children need to be adequately prepared for their participation in permanency hearings. They must be given information on their rights and responsibilities and know what to expect during the hearings. They must be debriefed after their hearings by the attorney for the child and/or their caseworker. The Permanent Judicial Commission on Justice for Children has produced a publication, [Tools for Engaging Children in Their Court Proceedings](#), that highlights the developmental stages of school-age children (ages 5 to 20 years) and provides a series of age-appropriate questions and tips that are relevant to appearing in court and participating in permanency hearings.

Source: "Permanency Hearing Notice and Participation Requirements" ([16-OCFS-ADM-08](#))

If the court determines that limiting the child's in-person participation is in his/her best interests, the court must make alternative methods of participation available, which may include:

- Splitting the permanency hearing into two parts
- Allowing the child to participate in the permanency hearing by telephone or other available electronic means
- The issuance of a written statement from the child to the court [[FCA 1090-a\(b\) and \(c\)](#)]

#### **c. Children 14 years of age and older**

The child must be permitted to participate in person in all or any portion of his or her permanency hearing in which he or she chooses to participate. The child may choose the manner in which he or she will participate, which may include participation in person, by telephone or available electronic means, or the issuance of a written statement to the court. [[FCA §1090-a\(b\) and \(c\)](#)]

For children who are age 14 or who will, before the next permanency hearing, reach the age of 14, the court must determine at the permanency hearing, and include in its order, that the permanency plan developed for the child and any revisions to it were developed in consultation with the child and, at the option of the child, up to two individuals selected by the child who are not a foster parent of, or the case worker, case planner or case manager for, the child [[FCA §1089\(d\)\(2\)\(vii\)\(G\)](#)]. It is important to note that this requirement is in regards to the service plan review or case consultation held to prepare for a permanency hearing and not the permanency hearing itself. For more information, see [Chapter 6](#) of this guide, "Permanency Placement Options."

During the permanency hearing, the Court must include an age-appropriate consultation with the child. If the child is age 16 or older, and the requested permanency plan for the child is placement in another planned permanent living arrangement with a permanency resource (APPLA), the court must ask the child about the desired permanency outcome for the child [FCA §1089(d)].<sup>4</sup>

## 6. Permanency Hearing Order

At the conclusion of each permanency hearing, the court must determine and issue its findings, and enter a permanency hearing order in writing. Findings are based on the proof introduced at the hearing, including age-appropriate consultation with the child and in accordance with the best interests and safety of the child; this includes whether the child would be at risk of abuse or neglect if returned to the parent or other person legally responsible [FCA §1089(d)].

A copy of the court order, which includes the date certain for the next permanency hearing and the permanency hearing report as approved, adjusted, or modified by the court, must be given to the parent or other person legally responsible for the child [FCA §1089(e)].

In reviewing the foster care status of the child, the court must consider, among other things, whether placement should be terminated and the child returned home and, if not, whether the permanency goal should be approved or modified. It also must determine whether reasonable efforts have been made to finalize the child's permanency plan [FCA §1089(d)].

The court will enter one of the following orders of disposition:

1. That the placement of the child be terminated and the child be returned to the parent or other person legally responsible for the child's care with such further orders as the court deems appropriate.
2. That the child not be returned to the parent or other person legally responsible for the child's care.

If the placement of the child is not terminated, the judge must determine whether the permanency goal for the child should be approved or modified, and the anticipated date for achieving the goal. See [Appendix 3-A](#) for detailed information related to permanency hearing orders [FCA §1089(d)(2)(i)].

Where a child freed for adoption has not been placed for adoption and the court had ordered the child be placed or directed the provision of services or assistance, the court may, in the best interests of the child, enter an order committing guardianship and custody of the child to another authorized agency [FCA §1089(d)(viii)(H)].

When the permanency goal is for the child to return to the parent, and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may give the LDSS the authority to discharge the child to the parent without another hearing, provided that the LDSS gives a ten-day prior written notice to the attorney for the

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<sup>4</sup> OCFS. "Permanency Hearing Notice and Participation Requirements" ([16-OCFS-ADM-08](#))

child and the court. Unless the attorney for the child or the court requests a hearing, no further permanency hearings will be required [FCA §1089(d)(viii)(C)].

## 7. Other court orders

### ***a. Order of protection***

The court may make an order of protection as a condition of any other order made as part of the Permanency Hearing Order. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period of time by a person before the court [FCA §1089(d)(viii)(D)].

### ***b. Termination of parental rights***

When the court finds reasonable cause to believe that grounds for termination of parental rights exist, the court may direct the LDSS or VA to institute a proceeding to legally free the child for adoption. If the agency fails to institute such proceeding within 90 days after entry of such order, the court may permit the foster parent or parents in whose home the child resides to institute such a proceeding [FCA §1089(d)(viii)(E)]. See [Chapter 6](#) of this guide for more information.

### ***c. Diligent efforts to strengthen the family***

The court may direct the LDSS or VA to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child and there has been no prior court finding that such efforts are not required. Diligent efforts may include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care, the noncustodial parent, grandparents, siblings, and half-siblings.

The order may include a specific plan of action for the LDSS or VA including, but not limited to, requirements that such agency assist the parent or other person legally responsible for the child's care in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment [FCA §1089(d)(viii)(F)].

## D. Other proceedings

Foster care caseworkers may be required to provide evidence or testimony in other types of Family Court proceedings, if they involve children or youth in care.

### 1. Person in Need of Supervision (PINS) petition

A person in need of supervision (PINS) is defined in the Family Court Act as a person under the age of 18 who:

- Does not attend school
- Is incorrigible or ungovernable (behaves in a way that is dangerous or out of control)
- Is habitually disobedient and beyond the lawful control of a parent or other person legally responsible the child's care or other lawful authority (often disobeys his/her parents, guardians, or other authorities)
- Unlawfully possesses marijuana
- Commits an act of prostitution
- Appears to be a sexually exploited child [FCA §712(a)]

The Family Court judge may order that a child or youth adjudicated to be a PINS be placed in foster care. This care can be provided in either a foster family boarding home or a child care facility such as a group home for up to 12 months [FCA §756]. During this period, the child and his/her family will continue to be offered services with the goal of family reunification.

If the child is placed on probation and violates the terms of the court order, a new dispositional hearing may be held and, if the violation is proven, the court may change its original order to placement into foster care [FCA §779].

### 2. Juvenile Delinquency petition

A juvenile delinquent (JD) is a child who is at least seven years old but younger than 16, who has committed an act that would be a crime if he/she were an adult [FCA §301.2(1)]. Due to "Raise the Age" legislation, as of October 1, 2018, a JD will be defined as a person who is at least seven years old but younger than 17 who has committed an act that would be a crime if the person were an adult. As of October 1, 2019, a JD will be a person who is at least seven years old but younger than 18 who has committed an act that would be a crime if the person were an adult.

A child who has been arrested may be brought directly to Family Court by the police or may be released after an "appearance ticket" is given to the child and the child's parent(s) or legal guardian(s). In some cases, the child will be placed in a detention facility prior to an appearance in Family Court [FCA §305.2].

After the petition is filed, court will hold a probable cause hearing [FCA §325.1], at which the judge will hear evidence in support and in defense of the charges. At the conclusion of the hearing, the court must determine: "whether it is reasonable to believe that a crime was

committed,” and “whether it is reasonable to believe that the respondent committed such crime” [FCA §325.3]. If probable cause is found, the case is tried at a fact-finding hearing to determine whether the child committed one or more acts that, if committed by an adult, would be a crime based on proof beyond a reasonable doubt [FCA §342.2].

If the youth has been adjudicated to be a JD, a dispositional hearing is held to determine if he/she requires supervision, treatment, or confinement (FCA §352.1). The judge then has several options. Among them are:

1. Dismiss the case, if the judge determines that the child does not need supervision, treatment or confinement [FCA §352.1(2)].
2. Grant a conditional discharge for up to one year [FCA §§352.2; 353.1].
3. Order probation for up to 2 years [FCA §§352.2 and 353.2].
4. Transferring the custody of the child to the LDSS or OCFS for up to 18 months if the child committed a felony, or 12 months if the child committed a misdemeanor [FCA §§352.2 and 353.3]. When custody is transferred to the LDSS, the child may be placed in a foster home, group home, or institution.
5. In cases of mental illness or developmental disability, transfer custody to the LDSS or OCFS, but direct the subsequent transfer of the child to the custody of the State Commissioner of the Office of Mental Health or Commissioner of the Office for Persons with Developmental Disabilities [FCA §§352.2 and 353.4].
6. Order restitution in an amount representing the fair and reasonable cost of repairing or replacing damaged property or providing the victim with compensation for unreimbursed medical expenses up to \$1,500 [FCA §353.6].
7. Where the child has been found to have committed a designated felony act, order a restrictive placement [FCA §353.5].

**a. *Sharing information***

When a child is already in the child welfare system at the time of the PINS or JD proceedings, information from LDSS records or reports may be disclosed to the Probation Department only when:

- There is an order by the Family Court – access is restricted to the records covered by the court order [SSL §372(4)]
- A local Probation Department has received prior approval from OCFS to provide preventive services as part of an approved Person in Need of Supervision (PINS) Adjustment Services Plan – access is restricted to the records otherwise available to a preventive services agency [NYCRR 18 423.2(a)]
- The Probation Department is conducting an investigation as part of a juvenile delinquency, PINS or family offense proceeding and there is reason to believe that the child or a sibling may have been abused or maltreated – access is limited to relevant CPS records of indicated CPS reports [SSL §422(4)(A)(k)].

In addition, when the Probation Department is conducting an investigation following a determination that a child is a JD who has committed a designated felony act, the caseworker must, upon request, provide the Probation Department with a written summary of services provided to a child by or through the LDSS [SSL §372(4-a); FCA §351.1].

### 3. Judicial surrender of legal guardianship and custody

A judicial surrender is the voluntary relinquishment or transfer of guardianship and custody of a child by the parent(s) or under certain condition by a legal guardian for the purpose of placement for adoption. A non-adversarial process, it is generally the simplest method of freeing a child for adoption. A signed and notarized surrender document approved by the court transfers guardianship and custody of the child to an authorized agency [SSL §§383-c; 384]. The consent of the parent (or guardian) who signs the surrender is no longer required for, and the parent no longer has veto authority over, the child's adoption.

When an agency is seeking a judicial surrender, the caseworker works with the LDSS or VA attorney to have the surrender proceeding scheduled on the court calendar. The court must appoint an attorney to represent the child who is being surrendered to an authorized agency. For more information, see [Chapter 6](#) of this guide.

### 4. Termination of parental rights

Each child with a PPG of return to parents or relatives, and who has been in care for 15 of the most recent 22 months, must either be discharged from care or the LDSS must file a petition to terminate parental rights [SSL §384-b(3)(I)]. The filing of a petition to terminate parental rights is not required under certain conditions, such as:

- The child is residing with a relative
- There are specific compelling reasons not to file
- The LDSS or VA has not provided services deemed necessary for the child to return home safely
- The parent is or has been incarcerated
- The parent is or has been a patient in a residential substance abuse treatment program

Sometimes the court may order the agency to file a petition to terminate parental rights. For more information about adoption, TPR, and permanency planning, see [Chapter 6](#) of this guide.

Generally, the child is not called as a witness at the TPR hearing. If the child has relevant information to share with the court, the judge may prefer to talk informally with the child in the judge's chambers.

A TPR petition may be granted on the basis of specific grounds: abandonment, permanent neglect, mental illness or intellectual disability, severe or repeated abuse, or death of the parents [SSL §384-b(4)].

An order committing guardianship and custody of a child pursuant to SSL §384-b may only be granted upon a finding that one or more grounds for termination of parental rights are based on clear and convincing evidence [SSL 384-b(3)(g)(i)]. In the case of Native American children subject to ICWA, the standard for termination of parental rights is “beyond a reasonable doubt”, including testimony of a qualified witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child [25 U.S.C. §1912].

### **a. Abandonment**

An abandonment proceeding is usually a one-stage proceeding in which the court decides, based only on the evidence presented, that the child has or has not been abandoned. The agency that submitted the petition will present witnesses who will testify to facts relevant to the issue of abandonment. These witnesses are likely to include:

- The case supervisor, who will testify that the case records are true and accurate records that are kept in the ordinary course of the agency’s business. This testimony is crucial when the agency wishes to introduce the records into evidence.
- The caseworker, who will answer questions about the child and the parent(s), based on documentation in the case record. Questions vary from case to case, but normally will include inquiries related to the following:
  - The failure of the parent to make contact with the agency
  - The fact that the caseworker is unaware of any visit or communication by the parent with the child or agency for the six-month period in question
  - The dates of the parent’s last contacts with the child and with the agency
  - Relevant communications between the parent and the caseworker
  - Facts about the parent’s failure to support the child or send letters, cards, or gifts
  - Where appropriate, a detailed account of attempts to locate the missing parent<sup>1</sup>

### **b. Permanent neglect**

A permanent neglect proceeding consists of two stages: a fact-finding hearing and a dispositional hearing. In both hearings, the court will hear evidence from witnesses presented by the parties, which may include the following:

- The case supervisor, who will testify that the case records are true and accurate records that are kept in the ordinary course of the agency’s business. This testimony is crucial when the agency wishes to introduce the records into evidence.
- The caseworker, who will answer questions about the child and the parent. These questions will vary from case to case, but normally include inquiries relevant to the following:

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<sup>1</sup> OCFS. (2010). [Adoption Services Guide for Caseworkers](#), p. 5-12

- The date the child came into care and the circumstances surrounding the placement
- The efforts made by the parent to reunite the family
- Contacts, visitation, and communications between the parent and child, including caseworker observations of the quality of such contacts
- The efforts made by the LDSS or VA to aid the parent in planning for the child's future and in rehabilitating the family unit
- Facts about a parent's failure to support the child, when relevant
- Facts about a parent's physical and financial ability, when relevant

*Other persons* may be called to testify if they have relevant information about the parent's failure to maintain contact with the child or plan for the child. These witnesses may include school officials, relatives, neighbors, law enforcement officials, medical professionals, and psychologists or therapists who have worked with or tested the parent(s).

When both a fact-finding and a dispositional hearing are held, some witnesses may be required to testify in both phases. The caseworker should give the agency's attorney a list of all possible witnesses who have firsthand knowledge relevant to the case.<sup>2</sup>

### ***c. Mental illness or intellectual disability***

The hearing on a mental illness or intellectual disability cause of action is a one-stage proceeding in which the court determines first whether the elements of the cause of action have been proved by the agency "by clear and convincing proof" (in the case of Native American children, the standard is "beyond a reasonable doubt").

The agency may present witnesses who will testify to facts relevant to the issue of the parent's mental illness or intellectual disability and the parent's resultant inability to provide proper and adequate care for the child. Witnesses may include:

- A *psychiatrist*, who will prove the diagnosis and prognosis of parental mental illness. When there is an allegation of intellectual disability, the agency must present a *psychologist* of its own choosing to support the diagnosis, in addition to any appointed by the court.
- Although the agency must rely primarily on the testimony of experts, the *caseworker* may be able to testify to facts about the parent's past child care capabilities or other information relevant to the court.
- The *case supervisor*, who will testify that the agency's case records are true and accurate records kept in the ordinary course of the agency's business. This

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<sup>2</sup> Ibid, p. 5-25

testimony is essential if the agency desires to introduce the case record into evidence.<sup>3</sup>

**d. Severe or repeated abuse**

Severe abuse and repeated abuse proceedings are divided into a fact-finding hearing and a dispositional hearing. The fact-finding stage requires that the petitioning agency prove all elements of the statute and the allegations included in its petition by clear and convincing evidence. If the court determines that the child has been severely abused or repeatedly abused by his/her parent, the court will schedule a dispositional hearing to hear evidence as to whether termination of parental rights would be in the best interests of the child.

Unlike a permanent neglect hearing, evidence presented at a severe abuse or repeated abuse dispositional hearing must not only be material and relevant, but also “competent.” This means that no outside reports, evaluations, or expert opinions may be offered in evidence unless the author of the report or the psychologist who did the evaluation can take the stand as a witness.

The agency may present witnesses who will testify to facts relevant to the issue of severe abuse or repeated abuse. Among the witnesses who may be presented are:

- The *case supervisor*, who will testify that the agency’s case record is a true and accurate record kept in the ordinary course of the agency’s business.
- The *caseworker*, who normally will answer questions relevant to the following:
  - The date the child came into care and the circumstances surrounding the placement
  - Contacts, visitation, and communications between the parent and child, including caseworker observations of the quality of such contacts
  - The efforts made by the agency to aid the parent in planning for the child’s future and in rehabilitating the family unit
  - The efforts made by the parent to reunite the family
  - Where applicable, reasons for any decision made by the agency to limit efforts to rehabilitate the family<sup>4</sup>

<sup>3</sup> Ibid., p. 5-35

<sup>4</sup> Ibid., p. 5-49

## E. Testifying in court

Caseworkers may be called upon to testify (speak to the court) during permanency hearings and other legal proceedings. These are not jury trials, so the testimony will be given before the Family Court or Surrogate's Court judge. The caseworker usually is asked to answer questions or provide further support for documents that have been submitted in the case. The caseworker also may be required to answer questions from the attorney for the child and/or an attorney representing the respondent in the case.

Caseworkers are expected to be knowledgeable about the condition of the child in care, the child's relationship (or lack thereof) with his/her birth parents, and the permanency planning goals that have been developed for the child. Much of this information has been entered in the child's case record in CONNX.

### 1. Preparing to testify

Caseworkers should begin preparing their testimony the moment they begin working with a family. The best method for having good testimony is to follow best practices for casework and carefully document in the case record the circumstances of the case and the reasons for placement decisions. This underlying work must be able to withstand scrutiny in a courtroom.

Caseworkers should review the case record prior to the court date. An unprepared witness often comes across as disorganized and less credible. Although a witness should feel free to think and take time when answering questions, taking long pauses can cause frustration for those in the courtroom, and may create the impression that the witness is unsure of the answer.

Practicing testimony can be helpful. The agency attorney, a supervisor, or a co-worker can ask practice questions that would be expected to be asked in court. This may reveal a flaw in the case, which should immediately be brought to the attention of the supervisor and agency attorney.

### 2. Responding to a subpoena

A subpoena is a mandate to provide evidence or testimony. When a caseworker receives a subpoena, it usually involves a proceeding *other than* a child welfare-related case, such as child custody or visitation disputes, employment discrimination or wrongful termination actions, applications for disability benefits, medical malpractice claims, personal injury claims, defense of criminal prosecutions, or a criminal prosecution.

Most subpoenas are issued by attorneys, but some are court-ordered. If a caseworker receives a subpoena, he/she should immediately inform the supervisor and agency attorney. The attorney should give advice on what is required to be produced or done in response to the subpoena. In some cases, the agency may oppose the subpoena and move in court to "quash" (nullify) it.

Caseworkers usually receive subpoenas because they are the custodians of client records or can serve as non-party witnesses. In most cases they are subpoenaed as “fact witnesses” who provide specific information about a client and a client’s personal circumstances or emotional condition.

Less often, caseworkers are retained or subpoenaed to testify as “expert witnesses.” An expert witness has been determined by the judge to be an expert in a particular topic. The distinction between a “fact” witness and an “expert” witness is that the judge will generally afford the professional opinion of an expert witness more weight than the opinion of a fact witness. Some judges may even refuse to permit fact witnesses give an opinion during testimony, while expert witnesses will be permitted to offer professional opinions as part of their testimony.

When responding to a subpoena for client information, the caseworker must take into consideration applicable confidentiality statutes and regulations. Caseworkers should consult with agency counsel on the parameters of the testimony and/or records that may be provided.



### **Practice Tip: Appearing in court**

Caseworkers are expected to be competent and professional – they are the experts in child welfare. To live up to that expectation, arrive at court on time (or early) and dress in conservative, professional attire. Behave professionally at all times, even in the hallways and waiting rooms. Follow the rules of the court and the courtroom.

When giving testimony, follow these basic principles.

- **Always tell the truth.**
- Answer only what is asked of you – don’t offer additional information, especially if it is not in the case record.
- **Don’t be afraid to ask for a question to be repeated if you didn’t hear or understand it.** If you still don’t understand it, say so. You are not required to answer a question you don’t understand.
- Bring your notes with you to the witness stand. If you need to refer to them, ask the judge for permission with a phrase like, “May I refresh my recollection?”
- If you don’t know the answer to a question, or don’t remember the answer, say so; don’t guess at the answer.
- **Speak to the court with confidence and respect, even if you believe that an attorney or the judge is not treating you with respect.** Inappropriate behavior by attorneys or judges is not a reason for you to also behave inappropriately.

The judicial system is the best system we have for resolving controversies and administering justice in this country. The ideals and principles that stand behind the courtroom should be respected by all.

Source: Hamlett, J. (2007). “The Art of Testifying in Court,” *Practice Notes*, North Carolina Division of Social Services, 12(4).

## Chapter 4: Foster Care Placement Options

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## Chapter 4

# Foster Care Placement Options

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As described in [Chapter 2](#) of this guide, a child may enter foster care for a variety of reasons. Generally, this occurs when a court determines that a child's health and safety cannot be maintained in their home, and no relative or suitable person has been identified to care for the child.

The standard related to the health and safety of the child is that, within the previous 12 months, the child or a sibling has been subjected by the parents or caretakers to serious physical injury by other than accidental means, or to the risk of serious physical injury, or to serious impairment of his/her physical, mental, or emotional condition as a result of the failure of the parents or caretakers to exercise a minimum degree of care [[18 NYCRR 430.10\(c\)\(1\)](#)].

The following additional reasons for placement in foster care are described in state regulations [[18 NYCRR 430.10\(c\)\(2\)-\(6\)](#)]:

- The child's parent(s) refuses to maintain the child in the home
- The child's parent(s) voluntarily surrenders custody of the child or parental rights
- The child's parent(s) is unavailable to care for the child due to hospitalization, arrest or detainment, death, or the parent(s) cannot be located
- The child's parent(s) needs services due to an emotional, mental, or physical condition that places the child at risk of serious physical or emotional harm
- The child has special needs for supervision or services that cannot be met by caretakers, even with in-home services
- The child's mother recently has given birth while in foster care and placement would enable mother and child to remain together and aid the mother in preparing to care for the child or surrender the child for adoption

Entry into foster care also may occur as the result of a petition in Family Court under Article 3 (juvenile delinquent), Article 7 (PINS), or Article 10-C (destitute child) of the Family Court Act. It may also occur through the signing of a voluntary placement agreement (SSL §384-a) or surrender (SSL §384). See [Chapter 2](#) of this guide for detailed information on entry into foster care.

## A. Factors that influence placement decisions

When a child enters foster care, the LDSS must decide where and at what level of care to place the child. Caseworkers must document why a placement decision was made, and that the placement decision was made according to the “least restrictive and most home-like setting” standard [18 NYCRR 430.11(d)(1)]. If the child is not placed in the least restrictive, most home-like setting, the LDSS or VA must inform OCFS of this decision and explain the rationale for it [SSL §398(6)(g)(1)].

Family foster homes and agency boarding homes are considered to be the least restrictive, most homelike settings available for foster care placement. Federal law also requires that “each child has a case plan designed to achieve placement in a safe setting that is the least restrictive and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child” [42 USC §675(5)(A)].

In some cases, however, congregate care (e.g., group homes, institutions, or residential care facilities) may be the most appropriate foster care setting. Stays in congregate care should be based on a child’s specialized behavioral and mental health needs or clinical disabilities. It should be used only for as long as is needed to stabilize the child or youth so they can return to a homelike setting.<sup>1</sup>

While family and home remain the best environment in which to raise a child, there will still be a number of children and youth whose complex needs can only be safely and appropriately addressed in a comprehensive treatment program available in residential care. Placement in residential care should be considered when its available services best meet the treatment needs of the child or youth.”<sup>2</sup>

In addition to “least restrictive, most homelike” standard, the caseworker must consider other factors in making placement decisions, such as:

- Continuity of the child’s environment
- The child’s service needs
- The child’s educational stability
- Placement of the child’s siblings

See [Section D](#) of this chapter for more detailed information on placement decision-making.

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<sup>1</sup> U.S. Department of Health and Human Services. (May 2015). “A National Look at the Use of Congregate Care in Child Welfare,” Administration for Children and Families, Children’s Bureau, Washington, D.C.

<sup>2</sup> OCFS. (2006). “Residential Care in New York State: 2006 and Beyond,” Rensselaer, N.Y.

## B. Levels of care

Levels of foster care range from the most homelike settings (relative or kinship foster care) to institutional settings.

### 1. Foster family home settings

Foster family home care is the “temporary or long-term care of a child whose care and custody or guardianship and custody have been transferred to an authorized agency” [18 NYCRR 443.1(e)].

#### **a. Relative/kinship foster care**

Relatives related by blood or marriage either in the first, second, or third degree, or beyond in the kinship line to the parent(s) or stepparent(s) of a child may be approved as foster parents for a child. These relatives are:

1. Grandparents of the child;
2. Great-grandparents of the child;
3. Aunts and uncles of the child, including the spouses of the aunts or uncles;
4. Siblings of the child;
5. Great-aunts and great-uncles of the child, including the spouses of the great-aunts or great-uncles;
6. First cousins of the child, including the spouses of the first cousins;
7. Great-great grandparents of the child; and
8. An unrelated person where placement with such person allows half-siblings to remain together in an approved foster home, and the parents or stepparents of one of the half-siblings is related to such person in the second or third degree.<sup>1</sup>

Approved relative foster homes are subject to the same reviews and standards as certified non-relative foster homes. They are intended to be temporary homes for children until they can safely return home. This arrangement can be the least disruptive option for a child in foster care.<sup>2</sup> When relative foster parents, decide to assume legal guardianship for a child, financial support may be available through the Kinship Guardianship Assistance Program (KinGAP).

For more information regarding kinship foster care, see [Chapter 5](#) of this guide.

#### **b. Foster family boarding homes**

Foster family boarding homes are certified foster homes where the foster parents are not related to the foster child at all or are related but not within the second or third degree to the parent or stepparent of the child in care. In order to become a certified foster home,

<sup>1</sup> OCFS. “Definition of Siblings and Expansion of the Relative Notification Requirements” ([15-OCFS-ADM-01](#))

<sup>2</sup> OCFS. (2010). [New York State Foster Parent Manual](#).

prospective foster parents must complete a home study and mandated training and meet certain criteria established in NYS regulation [18 NYCRR 443.2 and 443.3]. There are three levels of payments in a foster boarding home: normal (basic), special, and exceptional. These levels are determined by the level of care the child needs [18 NYCRR 427.6]. Certified foster boarding homes may provide respite care and services [18 NYCRR 435.2(b)(1)]. For more information on foster family boarding homes, see [Chapter 7](#) of this guide.

### ***c. Therapeutic foster boarding homes***

Therapeutic foster boarding homes are specialized foster homes that care for children that would normally need to be placed in a higher level of care, such as

- Infants and/or children with severe developmental disabilities
- Adolescents with a documented history of difficult behaviors and/ adjudication as PINS or juvenile delinquents
- Children with severe emotional disturbances
- Children with histories of group care placement or who are at risk of group care placement
- Children with at least one failed foster boarding home placement
- Children with severe physical handicaps<sup>3</sup>

Therapeutic foster boarding homes receive a higher board rate.

### ***d. Emergency foster boarding homes***

Emergency foster boarding homes are exclusively designated to provide temporary care to children who enter foster care in a crisis situation which is expected to be resolved within 60 days [18 NYCRR 446.1]. These foster parents are reimbursed at a higher rate and receive specialized training [18 NYCRR 446.5]. If a child needs to remain in an emergency foster boarding home after 60 days because he/she cannot return home, the foster home will be reimbursed at the standard rate for non-emergency care [18 NYCRR 446.4(a)].

### ***e. Agency boarding homes/Agency-operated boarding homes***

An LDSS or VA may operate an agency boarding home after the agency operated boarding home has been certified by OCFS in accordance with state regulations [18 NYCRR Part 447]. The facility must operate according to requirements outlined in regulation [18 NYCRR 447.2]. Agency-operated boarding homes are held to the same capacity standards as foster family boarding homes [18 NYCRR 447.2(d)].

## **2. Group emergency foster care program**

A group emergency foster care program is an institution, group home, or agency boarding home that has been designated by an LDSS and approved by OCFS [18 NYCRR 451.2]. Group emergency foster care programs must have the ability to conduct diagnostic

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<sup>3</sup> OCFS. (2010). [New York State Foster Parent Manual](#).

evaluations on children placed on an emergency basis [18 NYCRR 451.5(a)(1)]. The evaluation must be conducted by a certified social worker, licensed psychiatrist, or psychologist with the purpose of assessing the service needs of the child and family [18 NYCRR 451.5(a)(1) and (2)]. The district must provide appropriate information on the child and family to the group emergency program within three business days of the diagnostic placement [18 NYCRR 451.5(a)(3)].

### 3. Group homes and group residences

If a family foster boarding home or agency operated boarding home is not appropriate for a child, the LDSS or VA must follow the standards for placement in a group home or residence [18 NYCRR 430.11(d)(3)].

A group home is a family-type home for children in foster care that houses no fewer than 7 and not more than 12 children at a time; provides 24-hour supervision and services; and is operated by an authorized agency [SSL §371(17) and 18 NYCRR 441.2(h)]. It must meet the requirements for operation outlined in OCFS regulations [18 NYCRR 448.3].

A group residence is a subset of institution that cares for not more than 25 children at a time [18 NYCRR 441.2(g)]. See [Chapter 9](#) of this practice guide, “Residential Care Facilities,” for information on group homes and group residences.

Placement of a child in a group home or residence is appropriate when the child is ten years of age or older and:

- Placement is necessary, based in whole or in part on the child’s service needs or pregnancy.
- The necessary supervision or services cannot be provided in a foster home setting [18 NYCRR 430.11(d)(3)(i)].
- When the needed supervision or services cannot be specified, if one or more previous placements in family foster homes or agency boarding homes have been terminated due to the child’s refusal to stay in the home or the foster parent’s refusal is due to the foster child’s behavior [18 NYCRR 430.11(d)(3)(iii)].
- Placement is necessary for the child to remain with his or her mother and/or siblings where the child or the child’s mother requires foster care due to pregnancy or one or more of the siblings require care in a group home or group residence and it is in the best interests of the child to be placed with his or her sibling(s) [18 NYCRR 430.11(d)(d)(iv)].
- The child is a victim of incest and being a victim of incest is one of the reasons for placement [18 NYCRR 430.11(d)(3)(v)].
- The child’s parents resist placement in a foster home or agency boarding home setting and the group home or group residence would provide better access to the parents than would a foster home or agency boarding home, the child’s permanency goal is return to parent, and OCFS has approved the placement in this setting [18 NYCRR 430.11(d)(3)(vi)].

Children under the age of 10 may be placed in a group home or group residence under the following circumstances and with OCFS approval [18 NYCRR 430.11(f)(3)].:

- Placement will allow siblings to reside together or allow a child to reside with his/her mother [18 NYCRR 430.11(d)(3)(iv)]; and
- The child's service needs require 24-hour professional staff supervision and services, including at least three of the following, provided that the group home or residence has been given written approval by OCFS to care for children of these ages [18 NYCRR 430.11(f)(1)]. These services may include:
  - Intensive therapy from a licensed psychologist, psychiatrist, or a certified social worker
  - Onsite medical staff on a daily basis
  - A licensed speech pathologist
  - A licensed physical therapist
  - Any other licensed or certified therapist
  - Onsite educational services
  - Structured recreational therapy; and
- The group home, group residence, or institution has been granted written approval to care for children of these agencies [18 NYCRR 430.11(f)(2)]; or
- Placement has been approved by the LDSS commissioner or his/her representative [18 NYCRR 430.11(f)(3)].

#### 4. Institutions

An institution is a facility that cares for 13 or more children and is operated by a child care agency [18 NYCRR 441.2(f)]. However, for purposes of determining the appropriate level of placement, institutions with no more than 25 children (group residences) are treated the same as group homes, while different standards apply to placement into institutions with more than 25 children. See [Chapter 9](#) of this practice guide for information on standards for institutions.

Standards for placement in an institution with more than 25 children [18 NYCRR 430.11(d)(4)]:

- The child must be 12 years of age or older
- The necessity of the child's placement is based on the child's service needs [18 NYCRR 430.10(c)(5)]
- The child is in placement because his/her need for supervision or services cannot be provided in any other level of care

If the child is under 12 years of age, standards of placement are:

- The child's service needs require 24 hour a day awake professional staff supervision and services including at least three of the following, provided that the institution has been given written approval by OCFS to care for children of these ages [18 NYCRR 430.11(f)(1) and (2)]:
  - Intensive therapy from a licensed psychologist, psychiatrist, or a certified social worker
  - Onsite medical staff at least 16 hours per day
  - A licensed speech pathologist
  - A licensed physical therapist
  - Any other licensed or certified therapist
  - Onsite educational services
  - Structured recreational therapy

The specific placement must be approved by OCFS [18 NYCRR 430.11(f)(3)].

## 5. Supervised independent living program (SILP)

A supervised independent living unit is an agency boarding home that is certified as a supervised independent living program (SILP). A SILP is certified by an authorized agency and approved by OCFS to provide a transitional experience for older youth who, based on their circumstances, are appropriate for the level of care and supervision provided by the program [18 NYCRR 449.1(d)].

A supervised independent living unit [18 NYCRR 449.1(e)] may care for up to four youth, including their children. Standards for placement in a SILP include:

- The child is at least 16 years of age and not more than 21 years of age
- The child has been in foster care for at least 90 consecutive days or is currently on a trial discharge [18 NYCRR 449.4(d)(2)]
- The child has a permanency planning goal of another planned living arrangement (APPLA) with a permanency resource
- The child will be discharged from care 12 months after placement in the program with an established service plan for discharge.

The child may be discharged from care within 18 months after placement in the program if it is determined that the child would be unable to complete a vocational training or educational program if the child was discharged from the program to an alternative address within 12 months after placement in the program [18 NYCRR 430.11(d)(5)].

## 6. Court-ordered placements

If a child does not meet the previously stated age requirements, and a court has ordered the placement of the child in a group home, group residence, or institution, the first family

assessment and service plan required after the placement must include a copy of the court order or a description of the court order [[18 NYCRR 430.11\(e\)](#)].

## 7. Changing the foster care placement level

If the caseworker determines that a child's placement level needs to be changed, based on the service needs of the child, it must file a Service Plan Amendment [[18 NYCRR 428.7](#)]. Parent notification of a child's foster care placement change, providing there is no court order or safety plan provisions to limit parental involvement or contact, is widely considered to be best practice.<sup>4</sup> Parents are also informed of any change in placement levels when they participate in the development and review of the family's Service Plan [[18 NYCRR 428.3\(d\)](#)].

In addition, the attorney for the child must be notified of a planned change in the child's placement by the LDSS or VA caseworker at least 10 days in advance of the anticipated change. If the change is made as an emergency move, the attorney for the child must be notified as soon as the decision is made, and no later than the next business day.<sup>5</sup>

The attorney for the child must be given:

- The child's name, date of birth, and case number
- The reason for the child's change in placement
- The date and time the change in placement occurred
- The placement location prior to the change
- The planned or new placement location and contact information
- The agency and official that approved the placement change

The OCFS form "Attorney Notification of a Child's Change of Foster Care Placement" [[OCFS-4948](#)] can be used to help meet these requirements, or an alternative form meeting the requirements may be developed by the LDSS or VA.

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<sup>4</sup> OCFS. "Parent Notification of a Child's Foster Care Placement Change" ([11-OCFS-INF-03](#))

<sup>5</sup> OCFS. "Notice of Placement Change to Attorneys for Children" ([10-OCFS-ADM-16](#))

## C. Identifying placement sources

Within 30 days of removal of the child from the custody of the child's parent or parents, or earlier where directed by the Family Court or as required by a voluntary placement agreement executed under SSL§384-a, the LDSS must exercise due diligence to locate all of the child's grandparents, all parents of a sibling of the child where such parent has legal custody of the sibling and all other adult relatives, including adult relatives suggested by the child's parent, with the exception of a grandparent, parent or a sibling or other identified relative with a documented history of family or domestic violence [18 NYCRR 430.11(c)(4)].

In an Article 10 proceeding, where the court determines that the child must be removed from the his/her home, the LDSS must locate non-respondent parents and relatives of the child, including all of the child's grandparents, and:

- All relatives of the child identified by the respondent and non-respondent parents and any relative identified by a child over the age of five as playing or having played a significant role in his/her life, and
- All suitable persons identified as such by any of the child's respondent and non-respondent parents. Suitable persons are defined as "any person who plays or has played a significant positive role in the child's life or in the life of the family" [FCA §1017].

In any case where the LDSS proposes to accept transfer of care and custody of a child through a voluntary placement agreement, the LDSS must inform non-respondent parents, relatives, and other persons identified as being suitable to provide care for the child of the opportunity to seek care or custody of the child or to become foster parents [SSL §384-a(1-a)].

In any case where the child was removed based on allegations of abuse or neglect in an Article 10 proceeding, the LDSS must notify the non-respondent parent that he/she may seek temporary release of the child under Article 10 of the FCA or custody of the child under Article 6 of the FCA. The LDSS must also notify the relatives that they may seek to become foster parents of the child, provide free care of the child by having direct legal custody under Article 10, or seek legal custody of the child under Article 6. The same notice is to be given to other suitable persons with the exception that they may seek legal guardianship rather than legal custody under Article 6 of the FCA.

### 1. Non-respondent parent

Where the child was removed due to allegations of abuse and/or neglect, or where the LDSS has accepted transfer of care and custody through a voluntary placement agreement, the information collected about the non-respondent parent should include that person's:

- Name
- Last known address
- Social security number
- Name of employer and address
- Any other identifying information available [FCA §1017(1); SSL §384-a(1-b)]

The caseworker must report of the results of his/her efforts to locate non-respondent parents, relatives, and suitable persons to the court and to the parties involved, including the attorney for the child. Caseworkers must document their efforts to locate potential placement resources and the results of its efforts in the CONNX case record.<sup>1</sup>

The New York State Office of Court Administration [Form 10-7d](#), “Notice to Non-Respondent Parent(s) of Pending Child Protective Proceeding,” should be used to inform non-respondent parents.

## 2. Grandparents and other adult relatives

The caseworker must exercise due diligence to identify and locate grandparents and other adult relatives of the child, with the exception of relatives who have a history of domestic violence [[18 NYCRR 430.11\(c\)\(4\)](#)].

The caseworker must notify these relatives that the child has been removed from the home and also explain the options under which the relatives may potentially provide care to the child.<sup>2</sup> The notification must also explain that options for care may be lost if the relatives do not respond in a timely manner [[18 NYCRR 430.11\(c\)\(4\)](#), [SSL §384-a\(1-a\)](#)], [FCA §1017](#), [PL 110-351](#), [Section 103](#)]. The efforts to locate, engage, and notify relatives must be documented in the case record.

## 3. Putative fathers

The caseworker must try to locate any father of a child born out of wedlock who is not recognized as the legal parent and does not have the rights of a legal parent under the laws of New York State. The father is entitled, however, to notice of various court proceedings. [[SSL §384-c](#)].

Putative fathers include persons recorded on the Putative Father Registry administered by OCFS [[SSL §372-c](#)]. The registry includes the names and addresses of:

- Any person who has been adjudicated by a court in New York State to be the father of a child born out of wedlock
- Any person who has timely filed with the registry an unrevoked notice of intent to claim paternity of a child
- Any person who has been adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child



### **Practice Tip: Locating and engaging fathers**

For additional research, the Locating Fathers Tool Kit, and videos, see the OCFS [Fatherhood Initiative](#).

OCFS also offers special guidance on locating and engaging fathers involved in domestic violence situations. See the practice paper, “[Practice Considerations for Locating and Engaging Fathers in Domestic Violence Situations](#).”

<sup>1</sup> OCFS. “Changes to the Family Court Act Regarding Child Protective and Permanency Hearings, Including Changes Affecting the Rights of Non-Respondent Parents” ([17-OCFS-ADM-02](#)).

<sup>2</sup> OCFS. “Parent Notification of a Child’s Foster Care Placement Change” ([11-OCFS-INF-03](#))

- Any person who has filed with the registry an instrument acknowledging paternity of a child
- Any person who is recorded on the child's birth certificate as the child's father
- Any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in foster care, and who is holding himself out to be the child's father
- Any person identified as the child's father by the mother in a written, sworn statement
- Any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding to terminate parental rights

Consideration of not only the father, but also his extended family, broadens the opportunity for the child to experience meaningful connections and potential permanency resources.<sup>3</sup> Where ordered by the court, the caseworker must report the results of his/her efforts to locate any putative father to the court and the parties, including the attorney for the child. [FCA §1017(1)(b)]

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<sup>3</sup> OCFS. "Locating and Engaging Fathers," accessed at [http://ocfs.ny.gov/main/cfsr/Locating\\_and\\_Engaging\\_Fathers\\_and\\_Relatives.asp](http://ocfs.ny.gov/main/cfsr/Locating_and_Engaging_Fathers_and_Relatives.asp)

## D. Other factors in placement decision-making

When a child cannot be placed with a non-respondent parent, relative, or other suitable adult, he/she must be placed in a non-relative foster home or in one of the other foster care options described in [Section B](#) of this chapter. Caseworkers must make efforts to achieve “continuity in environment” for the child by placing him/her in a location that is as similar as possible to the child’s home and community prior to placement [[18 NYCRR 430.11\(c\)](#)]. Efforts to maintain continuity in environment must be documented in the uniform case record [[18 NYCRR 430.11\(b\)](#)].

### 1. Placement with siblings

Children entering foster care must be placed with their siblings or half-siblings, unless doing so could jeopardize the health, well-being, or safety of one or more of the children in the sibling group [[FCA §1027-a](#); [SSL §409-e\(1\)\(d\)](#); [SSL §384-a\(1-a\)](#); [18 NYCRR 431.10](#)]. In addition, the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 [[PL 110-351](#)] requires states to demonstrate that reasonable efforts have been made to maintain sibling groups in foster care.

The bond with siblings is essential for maintaining a child’s emotional health while in care. Being placed with siblings helps children in care to feel connected with their homes of origin and to maintain some level of continuity in their lives, even when it is not possible for them to remain in the home with their parents. A separation from siblings, in addition to a separation from parents, can compound the sense of grief and loss that children most likely feel when they are removed from their homes. Foster parents must be informed if a child placed in their home has siblings or half-siblings and their whereabouts [[18 NYCRR 431.10\(d\)](#)].

Given the expectation that siblings will be placed together, the LDSS or VA must make diligent efforts to identify a foster or adoptive home willing and able to accept the placement. This includes identifying a relative willing to provide kinship care to all of the children or some of them while providing opportunities for continuing contact among the siblings.”<sup>1</sup>

If, after consulting with a professional such as a psychologist, psychiatrist, or physician, the caseworker determines that a sibling group needs to be separated in order to maintain the



#### **Practice Tip:**

#### *The importance of siblings*

The sibling bond is important to children’s development and emotional well-being. Siblings are family, and the connection to family helps give children their identity as well as their feeling of belonging in the world. Sibling contact gives children continuity with their families, even when circumstances require separation from their parents. Conversely, the loss experienced by children who must be separated from their parents because of safety or other reasons is only compounded by the loss of contact with their siblings.

Source: “Keeping Siblings Together: A White Paper on Siblings in Foster Care and Adoptive placements in New York State”

<sup>1</sup> OCFS. (June 2007) “Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State.”

health, well-being, or safety of one or more of the children, the following factors may be taken into consideration in making that determination [18 NYCRR 431.10(b); SSL §409-e(1)(d)]:

- Age differentiation of siblings
- Health and/or developmental differences
- Emotional relationship between siblings
- Individual service needs of one or more of the children
- Attachment of individual children to different family members or locations
- Other continuity factors outlined below

If siblings or half-siblings are placed separately due to an emergency foster care placement, they must be reunited within 30 days of the emergency placement, unless the LDSS or VA determines it would not be in the best interest of one or more of the children in the sibling group [18 NYCRR 431.10(c)].

For more information on documenting placement decisions related to sibling groups, see [Section F](#) of this chapter.

## 2. Educational stability

Education is a significant factor in determining the long-term success of a child. Children and youth in foster care are more likely to have lower levels of educational success and access to fewer resources.<sup>2</sup> Studies have shown that “[T]he lower levels of educational attainment of youth in foster care are linked to the increased number of school transfers and the number of foster care placements that many have experienced. ... With each school transfer, students on average lose four to six months of academic growth. Moreover, students who rarely or never change schools are far more likely to graduate from high school than their peers who have transferred schools more often.”<sup>3</sup>

New York regulations [18 NYCRR 430.11(c)(1)(i)] implementing federal law [42 U.S.C. 675(1)(G)] provide that the initial placement of the child into foster care and all subsequent placements must take into account the appropriateness of the child’s existing educational setting and the proximity of such setting to the child’s placement location.

When it is in the best interest of the child to continue in the school in which the child is currently enrolled, the LDSS or VA must coordinate with the applicable school district to ensure that the child remains in that school.

When it is not in the best interests of the child to remain in the school in which the child is currently enrolled, the LDSS or VA must coordinate with the applicable school authorities where the foster child is placed in order that the foster child is provided immediate and appropriate enrollment in a new school and to have all applicable records sent to the new

<sup>2</sup> U.S. Department of Education & U.S. Department of Health and Human Services. (June 2016). “Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care,” Washington, D.C.

<sup>3</sup> OCFS. “Educational Stability of Foster Children: Field Guidance” ([12-OCFS-INF-04](#)).

school. This collaboration between the LDSS or VA and the applicable school authorities must address the following issues:

- Immediate enrollment
- Best-interest decision-making and dispute resolution
- School transportation
- Joint collaboration

**a. Selection of appropriate school setting**

OCFS recommends that LDSSs take the following into consideration when determining if a child in foster care should remain in his/her current school setting:<sup>4</sup>

- Safety concerns
- Child's preference
- Parent's preference
- Appropriateness of education program in the child's current school
- Expected length of the child's foster care placement
- Child's permanency plan
- Child's need for proximity to family and placement with siblings or relatives
- Available foster placements and their location in relation to the child's current school
- Child's age, grade and maturity level
- Number of school disruptions already experienced
- Impact of a disruption on the child's emotional health and well-being
- Impact of a disruption on the child's ability to earn credit, graduate or progress a grade on time
- Child's involvement in sports or extra-curricular activities
- Input from official at child's current school
- Length of commute for the child
- What schools the child's siblings attend and the child's relationship with those siblings
- What school the other children in the foster home attend

The LDSS or VA is responsible for determining that any child in foster care is a full-time elementary or secondary student or has completed secondary education [18 NYCRR 430.12(c)(4)]. Decisions about a child's educational setting must be documented in the

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<sup>4</sup> OCFS. "Educational Stability of Foster Children: Field Guidance" ([12-OCFS-INF-04](#)).

uniform case record in relation to the child's placement in foster care [18 NYCRR 430.11(c)(2)(ix)]. See [Section F](#) of this chapter for more information.

### ***b. Sharing of educational records***

The federal Family Educational Rights and Privacy Act [20 U.S.C. §1232g and 34 CFR Part 99] allows educational institutions to provide, without written parental consent, student information to an agency caseworker or other representative of a state or local child welfare agency who has the right to access a student's case record, when such agency or organization is legally responsible in accordance with state law for the care and protection of the student.

These records can be re-disclosed only to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure. Such disclosure must be consistent with state laws applicable to protecting the confidentiality of a student's educational records.<sup>5</sup>

## **3. Continuity in community**

In addition to maintaining a child's educational stability and proximity to family, including siblings, caseworkers also must consider maintaining continuity in the child's community when making a foster care placement decision [18 NYCRR 430.11(c)(1)]. Continuity in community or environment could include school, peers, family members, etc., but there are several other factors to consider as well.

### ***a. Ethnic and racial background***

The federal Multi-Ethnic Placement Act (MEPA), as amended, requires states to develop plans for the recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children for whom families are needed.<sup>6</sup> The purpose of this requirement is to encourage child welfare agencies to have a "pool" of foster/adoptive homes that reflect the ethnic and racial characteristics of children coming into foster care. MEPA also:

- Prohibits agencies involved in foster care or adoption placements from delaying, denying, or otherwise discriminating when making a foster care or adoption placement decision on the basis of the parent or child's race, color, or national origin
- Prohibits agencies involved in foster care or adoption placements from denying any person the opportunity to become a foster or adoptive parent on the basis of race, color, or national origin of the parent or the child

The LDSS or VA must assess each child's individual needs rather than relying on generalizations based on the child's race, color, or national origin. An LDSS or VA cannot:

- Keep a child in a shelter or temporary foster care placement to identify a foster parent of particular race, color or national origin

<sup>5</sup> OCFS. "New York State Education Department Historical Data for Children in Foster Care" ([16-OCFS-ADM-01](#))

<sup>6</sup> OCFS. "Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1966" ([15-OCFS-ADM-05](#)).

- Remove a child that is doing well in a placement to place them with a foster parent of the same race, color or national origin
- Use race, color or national origin to make a decision between two acceptable placement choices, or
- Ask foster parents to demonstrate cultural competency of a different race, color or national origin in order to make a placement decision
- Routinely consider race, color, or national origin in making placement decisions

Consideration of race, color, or national origin may only be done on an individualized, case by case basis when special circumstances exist.<sup>7</sup> For more information on MEPA, refer to [Chapter 1, Appendix 1-B](#) of this guide.

### **b. Native American culture**

The federal Indian Child Welfare Act (ICWA), and New York state law and regulations require LDSSs and VAs to follow specific procedures when a case involves a child who is a member of a federally recognized tribe [SSL §39(6); 18 NYCRR 431.18].

State law defines an “Indian child” as an unmarried person who is under the age of 18 or is under the age of 21 but was under the age of 18 when he/she entered foster care and who is a member of an Indian nation/tribe, is eligible for membership in an Indian nation/tribe or is the biological child of a member of an Indian nation/tribe and is living or domiciled within an Indian reservation [SSL §2(36)]. State law in New York uses the term “Indian” rather than “Native American.”

State law defines an Indian tribe as those tribes (nations) designated by the Bureau of Indian Affairs of the federal Department of the Interior or by the State of New York [SSL §2(35)]. For the purpose of compliance with state regulation, an Indian tribe/nation also includes any tribe, band or other organized group or community recognized by any other state [18 NYCRR 431.18].

In every case where the child may be removed from the home, with the exception of juvenile delinquency cases, inquiries regarding the child’s status must be made of the family and, depending on age and capacity, the child. The provisions of ICWA apply to a child even if there is only “reason to know” that the child is an Indian child. According to



#### **Practice Tip:** *Implementing ICWA*

OCFS provides several tools to assist caseworkers in implementing federal and state regulations related to ICWA. These include:

A [model notice of a child custody proceeding](#), which should be sent by registered or certified mail.

[FAQs](#) on the Indian Child Welfare Act.

[Mailing addresses](#) for tribes and nations in New York State.

<sup>7</sup> OCFS. “Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996” ([15-OCFS-ADM-05](#))

federal regulations, this means that if there is reason to know that the child is American Indian or Alaska Native, all protections afforded under ICWA to an Indian child apply until it has been determined by the court that the child does not meet the definition of an Indian child [25 CFR §23.107].

Treating the child as an Indian child from the early stages of the case prevents delays and possible changes in foster care placement to comply with the ICWA placement preferences that could result from a later application of ICWA. ICWA requirements are not applied simply based on a child or parent's Indian ancestry. The court's decision as to whether a child is an Indian child is dependent on tribal membership/citizenship or eligibility for such membership/citizenship. The Indian tribe/nation determines whether the child is a member/citizen or eligible for membership/citizenship in the tribe/nation. This determination is solely within the jurisdiction and authority of the tribe/nation [25 CFR §23.108].<sup>8</sup>

There are eight state and federally and one state only recognized Native American nations/tribes in New York State and ten Indian reservations within the state's borders. The majority of Native Americans in the state do not live on reservations. The [OCFS Native American Services Office](#) maintains a current list of tribal contacts. The office also provides forms and documents related to ICWA compliance.

When a child is identified as an Indian child, the caseworker must:

- Notify the child's parents, Indian custodian, nation/tribe, and the federal Bureau of Indian Affairs by registered or certified mail of any proceeding that may culminate in:
  - Placement in foster care
  - Termination of parental rights
  - A pre-adoptive placement
  - An adoptive placement<sup>9</sup>
- Demonstrate that "active efforts" were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family

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<sup>8</sup> OCFS. "Implementing Federal and Corresponding State Indian Child Welfare Act Regulations" ([17-OCFS-ADM-08](#))

<sup>9</sup> Ibid.

- Absent good cause to the contrary, place the child in foster care with:
  1. A member of the child's extended family
  2. A foster home certified, approved, or specified by the child's nation/tribe as well as by the LDSS or VA
  3. An Indian foster home certified or approved by an LDSS or VA to provide foster care services
  4. A residential facility for children approved by an Indian nation/tribe or operated by an Indian organization that has a program to meet the needs of the child [18 NYCRR 431.18]

**c. Religion**

The religion of a child in foster care cannot be changed without the written consent of his or her parents or legal guardian [18 NYCRR 441.11(d)]. The child must be allowed to maintain religious observances, instruction, and training. Arrangements must be made for the child to continue to attend services in his/her faith, unless the parent or legal guardian expresses otherwise in writing [18 NYCRR 441.11(b)]. When practicable and consistent with the best interests of the child, a child must be placed in a foster family home, agency boarding home, or group home with caregivers that reflect the religious wishes of the child's birth parent [SSL §373]. If a child is placed in a voluntary agency, the voluntary agency must make the previously mentioned provisions so that the child can continue to observe his/her faith [18 NYCRR 441.11(c)].

If the child is placed in the care of a person or agency with a different designated faith, an explanation must be documented in the case record, along with documentation of the child's designated faith [18 NYCRR 428.3 (b)(2)(i)]. Birth parents may make their religious preferences for their child known by using OCFS Model Form [LDSS-3416](#).

## E. Assessing the child's needs

Casework with families whose children are in foster care often involves gathering and analyzing information from multiple sources while managing a complex array of needs, issues, priorities, decisions, and timeframes. Accurate, complete, and timely recording of this information is critical to shared decision making and coordination of activities among the various helpers/decision makers in a case at any given time, as well as for making this information available for future reference.<sup>1</sup>

It is essential for caseworkers to take into consideration all available and appropriate assessments of the child so the child may be placed in the most appropriate setting. By the time the decision is made to place a child into foster care, information has been gathered about the child, the family, and the circumstances leading to the placement decision. This information will be helpful as the caseworker assesses the child's needs and decides, with their supervisor, which level of placement is most appropriate for the child, given the child's needs. The caseworker should consider all available sources of information, including but not limited to those below.

### 1. FASP safety assessment

The FASP provides a record of all the information that has been gathered about a family and also assists in the assessment and evaluation of the family's service needs and child's safety, permanency and well-being. As part of the FASP, the safety assessment assists the caseworker in determining whether there is an immediate threat to a child or a likelihood of serious harm [18 NYCRR 428.2(i)].

As the FASP is updated throughout the case, it must include a continuing written consideration of whether it is safe for the child to remain in his or her current foster care placement, and whether it is safe to discharge the child from foster care [18 NYCRR 428.3 (g)]. For a more detailed discussion of the FASP, see [Chapter 12](#) of this guide, "Family Engagement and Services."

#### a. Protective Safety Assessment

If the child was removed from the home as part of an Article 10 proceeding ("Protective" Program Choice selected in CONNECTIONS), CPS will have already conducted an initial safety assessment, which is part of the case record. The record also will include a Safety Plan that identifies a set of actions and interventions intended to protect a child or to control a dangerous situation.

The plan must be modified during the life of the case in response to changes in the family's circumstances, as necessary, to continually protect the children. A Safety Plan is necessary until the protective capacity of the parent/caretaker is sufficient to eliminate immediate or impending danger of serious harm to the children in the absence of any controlling interventions.<sup>2</sup>

<sup>1</sup> OCFS. (2017). [Family Assessment and Service Plan \(FASP\) Guide](#), Module 8: Foster Care Issues

<sup>2</sup> OCFS. (2017). [Family Assessment and Service Plan \(FASP\) Guide](#), Module 5, Safety Assessment

### ***b. Non-CPS Safety Assessment***

If a child has been placed in care for reasons other than protective, a non-CPS Safety Assessment should be conducted by the assigned caseworker. The focus of the Safety Assessment extends to include any non-CPS related dangers or threats to the safety of the child, other family members, and the community. These can be posed by persons or circumstances within the family/home (e.g., child behavior or a serious family crisis resulting in loss/incapacity of a caretaker).

## **2. FASP Risk Assessment**

A comprehensive Risk Assessment Profile (RAP) will also be completed during a CPS investigation and this information is included in the initial FASP. The purpose of the RAP is to help the caseworker determine the likelihood that a child will suffer some form of abuse or maltreatment at some point in the future [18 NYCRR 432.2(d)]. During the risk assessment, the caseworker will:

1. Gather information on the presence or absence of a set of circumstances and behaviors in the parent/caretaker's household(s)
2. Identify any elevated risk elements
3. Use the CONNX system to calculate a risk rating
4. Use the risk rating and other circumstances to determine the family's need for services that will reduce the likelihood of future abuse or maltreatment of the child(ren)
5. Develop a service plan that targets the behaviors or circumstances (risk elements) that have been identified as contributing to the risk of future abuse or maltreatment<sup>3</sup>

The caseworker engages with the family while completing ongoing safety assessments and risk assessments to gather information, sift through the information separating facts from assumptions, identify and gather any missing information, and reach a conclusion that will inform further actions.

## **3. Health assessment**

The health assessment includes an initial health screening by a qualified healthcare professional, obtaining all available health records, a comprehensive medical examination, and, where appropriate, a mental health assessment [18 NYCRR 441.15 and 441.22(c)]

### ***a. Initial health screening and gathering of records***

To the extent possible, each child should receive a health screening within 24 hours of entering foster care. The purpose of this is to observe the child and gather information in order to identify any active health problems, any need for immediate care, and the need to continue medications, if any. It is recommended that a qualified healthcare practitioner conduct the screening, but a caseworker trained to use a screening tool may also

<sup>3</sup> OCFS. (2017). [Family Assessment and Service Plan \(FASP\) Guide](#), Module 6, Risk Assessment

conduct the screening, if necessary. *Emergency rooms should not be used for routine screening.*<sup>4</sup>

The screening should gather these types of information about the child:

- Signs of abuse or neglect
- Active medical or psychiatric problems
- Current medications, if any
- Known allergies to food, medication, or environment
- Upcoming medical appointments
- Need for eyeglasses, hearing equipment, or any other medical devices
- If child is an infant, any notable delivery history<sup>5</sup>

Prior to accepting the child into care in cases involving voluntary placements or within 10 days after admission into care (in the case of an emergency or court-ordered placement), authorization must be requested from the child's parent or guardian for release of the child's past medical records and for consent to medical assessments, immunizations, routine health care, and emergency medical care if the parent cannot be contacted.

The voluntary transfer agreement will establish whether the local social services commissioner has authority to consent to medical care.

If written consent for release of such records cannot be obtained, the LDSS commissioner may authorize release of such records [18 NYCRR 441.22(d)].

If written authorization for routine medical care cannot be obtained, and the child is in foster care due to an Article 10 proceeding or a finding that the child is a destitute child, the LDSS commissioner may provide such authorization. Where a child is placed with a LDSS as a juvenile delinquent, the LDSS may give consent for routine medical, dental and mental health services and treatment [FCA §355.4]. If the child is in foster care because of having been adjudicated as a PINS, the LDSS must seek a court order authorizing medical care. If parental rights have been surrendered or terminated, the LDSS commissioner may consent to medical care for the child [SSL §383-b; 18 NYCRR 441.22(d)].<sup>6</sup>

### **b. Comprehensive medical examination**

Every child entering foster care must be given a comprehensive medical examination within 30 days of placement [18 NYCRR 441.22(c)(1)]. If records are available showing that a comprehensive medical examination meeting the requirements of the regulation was completed within 90 days prior to the child's admission into foster care, and the agency determines that another comprehensive medical examination is not necessary,

<sup>4</sup> OCFS. (2009). [Working Together: Health Services for Children in Foster Care](#), p. 1-3

<sup>5</sup> Ibid., p. 1-3

<sup>6</sup> Ibid., Chapter 6

the comprehensive medical examination may be waived. The examination should be done by a qualified medical professional in a way that takes into account the child's age, developmental stage, and background. The comprehensive examination should include [18 NYCRR 441.22(c)(2)]:

- Health and developmental history
- Unclothed physical exam
- Assessment of immunization record and provision of immunizations if necessary
- Vision assessment
- Hearing assessment
- Any appropriate laboratory testing
- Dental screening
- Observation for abuse or maltreatment, which, if found, should be reported to the SCR

#### **c. Mental health assessment**

Mental health assessments are recommended for children age three and older within 30 days of placement. Although not explicitly required in OCFS regulations, Early Periodic Screening, Diagnosis and Treatment (EPSDT) requires an assessment of mental health development for all Medicaid eligible children, and the American Academy of Pediatrics recommends a psychosocial/behavioral assessment at each checkup.<sup>7</sup>

A mental health assessment is conducted by a qualified mental health professional and should identify the child's mental health strengths and needs and include a treatment plan.

If mental health needs are identified, appropriate services must be made available to the child [18 NYCRR 441.15]. For a more comprehensive list of components of a mental health evaluation, refer to the OCFS publication [Working Together: Health Services for Children in Foster Care](#).

#### **d. Developmental assessment**

An initial developmental assessment is recommended within 45 days of placement in foster care. Although not explicitly required for children in foster care, developmental assessments are required for all Medicaid-eligible children. OCFS regulations require a developmental assessment [18 NYCRR 441.22(c)(2)].<sup>8</sup>

A developmental assessment should include:

- Developmental history

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<sup>7</sup> Ibid., p. 1-12

<sup>8</sup> Ibid

- Clinical assessments of fine and gross motor skills, cognition, language, emotional well-being, self-help skills, coping skills, relationships, and other behaviors
- A treatment plan, if needed
- Substance abuse assessment

It is recommended that an initial substance abuse assessment take place within 45 days of placement in foster care for children age 10 or older as either an independent activity or a component of the mental health assessment. Standards for services to Medicaid-eligible adolescents require an assessment of psychosocial adjustment, including use of drugs, alcohol, and tobacco.<sup>9</sup> The purpose of the assessment is to determine if the child is currently using drugs or alcohol, is at risk of such use, and if there is a family history of substance abuse.

See [Working Together: Health Services for Children in Foster Care](#) for recommendations on assessment tools for adolescents. An appropriate treatment plan should be developed should any substance abuse issues be identified.

#### **e. HIV risk assessment**

Pursuant to New York State regulation, a child must be assessed for capacity to consent to an HIV test within 5 business days of entering care. If the child does not have the capacity to consent, the child must be assessed for risk of HIV infection within 5 business days of entering care [18 NYCRR 441.22(b)]. If the child has the ability to consent, an assessment of the child's risk of HIV must be completed within 30 business days of the child entering into care. The LDSS or VA must counsel the child on risky behaviors related to contracting HIV, and the importance of reduction behaviors. If it is determined that the child does not have the ability to consent, trained staff at the LDSS or VA must perform the HIV risk assessment. Such staff must be aware of HIV confidentiality requirements.<sup>10</sup>

## **4. Educational assessment**

When a child in a foster care placement (including foster family care, agency-operated boarding home or group home) is admitted to the school district near the placement location, the LDSS or VA must provide the following to the school district superintendent within 10 days of the child's admission to school [18 NYCRR 445.1(a)]:

- Name of the child
- Name and address of foster parents or agency that operates the boarding or group home
- Name and address of the school district that the child was registered in at the time of placement into foster care

<sup>9</sup> Ibid

<sup>10</sup> OCFS. "Assessment of Foster Children for Capacity to Consent and HIV Risk; Documentation and Disclosure" ([97-OCFS-ADM-15](#))

- Name and address of the school last attended by the child
- Name and address of the local district commissioner, and if applicable, the name and address of the VA acting on their behalf

The LDSS and VA, if applicable, should also supply to the school district that the child attended at the time of removal the following:

- Name of the child
- Address of the child when the child entered foster care
- Date the child entered foster care
- Date of birth or apparent age of the child
- Name and address of the school district to which the child was admitted

The caseworker should carefully review educational records provided by the child's school and to determine whether the child requires any special accommodations, has an Individualized Education Plan (IEP), or has been meeting with the Committee on Preschool Special Education (CPSE). The caseworker should then make an effort to see that the child continues to receive appropriate educational services at his/her current school, or at the child's new school, if disruption has been necessary. The caseworker should work closely with the school to determine if the child needs any further academic evaluation.

## F. Documenting placement decisions

The FASP and its accompanying Progress Notes is the mechanism by which foster care workers document work with the child and the family. The FASP is maintained within CONNX and may be updated by any staff who are assigned to the case.

Information is entered in the “Foster Care Issues” section of the FASP, which consists of six sub-sections, each with multiple tabs/questions that address the key components of foster care assessment, planning, and decision-making. The “Appropriateness of Placement” subsection includes documentation of the appropriateness of the placement decision and the child’s specific placement setting [18 NYCRR 428.6(a)(2) and 430.11(c)(2)(vii)].

### 1. Location of the child

A child must be placed in the least restrictive setting appropriate to the child’s needs [18 NYCRR 430.11(d)(1)]. Whenever a child is placed at a level of placement other than a foster family boarding home or agency boarding home, the caseworker must show that this level of placement is necessary and appropriate to meet the child’s needs. This must be recorded within 30 days of the placement or change in placement [18 NYCRR 428.3(f)(4), 428.7(d), 430.11(d)(3)(ii), 430.11(d)(4)(ii)].

When placement is necessary, a child should also be placed as close as possible to his/her family, as long as it is not contrary to the child’s safety or well-being [18 NYCRR 430.11(c)]. If a child is placed at considerable distance from his/her family, caseworkers must document why this placement is in the child’s best interests despite, or perhaps because of, the distance [18 NYCRR 430.11(c)(2)].<sup>1</sup>

### 2. Continuity of environment

In this subsection of the FASP, the worker must:

- Indicate whether siblings have been placed in the same home. If siblings have not been placed together, the caseworker must explain the reasons for this decision.
- Document whether the placement permits continuity in family, community, school, and religion. Where continuity has not been achieved in any of these categories, the caseworker must explain why.
- Describe any efforts to maintain or to promote continuity, such as planned visitation with siblings and relatives or continued participation in school or community activities. The description must include any barriers to continuity.<sup>2</sup>

<sup>1</sup> OCFS. (2017). *Family Assessment and Service Plan (FASP) Guide*, p. 8-8

<sup>2</sup> Ibid, p. 8-10

### **3. Continuity of culture for American Indian children**

This subsection must be completed for each child in out-of-home placement. The caseworker must answer these questions:

- Is the child in placement an American Indian child?
- Does this placement meet the requirement for the child to be placed in a home compatible with the child's culture?
- Was the required order of preference for placement of American Indian children followed?

Depending upon the caseworker's response to these questions the caseworker will be prompted to provide more detailed information:

- Specific contact with the parents, child, or family regarding the child's possible tribal affiliation
- Specific tribal affiliation, name, telephone, and address of tribal affiliate, and any input or decision provided by tribal affiliate pertaining to the child's placement
- The reasons the order of placement preference was not followed, if applicable.

## Chapter 5: Kinship Foster Care

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# Chapter 5

## Kinship Foster Care

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Kinship foster homes are key resources in the overall strategy for finding homes that best meet children's needs. When children can't live safely with their parents and are placed into care, child welfare policy prioritizes placement with relatives or someone with a positive prior history with the child. Nationally, 30 percent of children live in kinship foster homes, with high performing states placing up to 50 percent of children in care in kinship foster homes.<sup>1</sup>

The term “kinship foster care” is applied both to relatives who become approved or certified foster parents and to nonrelatives with positive relationships with children or families who become certified foster parents.

Children in kinship care placements tend to have:

- Fewer moves while in care
- Lower re-entry rates
- More placements with siblings
- Less additional involvement with Child Protective Services or juvenile justice systems<sup>2</sup>

Researchers have identified longer-term positive impacts on the behavioral well-being of children placed with a kinship caregiver: “Children placed into kinship care had fewer behavioral problems three years after placement than children who were placed into foster care.”<sup>3</sup> In addition, “Children who moved to kinship care after a significant time in foster care were more likely to have behavioral problems than children in kinship care from the outset,”<sup>4</sup> emphasizing the importance of searching for and identifying potential kinship caregivers early in the case.

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<sup>1</sup> Adoption and Foster Care Analysis and Reporting System (AFCARS). (2016). Accessed at <https://www.acf.hhs.gov/cb/resource/afcars-report-24>

<sup>2</sup> Winokur, M., et al. (2008). Matched comparison of children in kinship care and foster care on child welfare outcomes, *Families in Society: The Journal of Contemporary Sciences*. 89:3, 338-346.

<sup>3</sup> Rubin, D. et al. (2008). Impact of kinship care on behavioral well-being for children in out-of-home care. *JAMA Pediatrics Journal*. 162:6.550-556.

<sup>4</sup> Ibid.

## A. Who can provide kinship care?

In New York State, a home where relatives within the third degree provide foster care is considered to be an “approved home.” An approved home is defined as a home in which temporary or long-term foster care is provided to a child by a foster parent who is a relative within the second or third degree to the parent(s) or step-parent(s) of the foster child, and who is duly approved by a LDSS or a VA [18 NYCRR 443.1(f)].

A kinship caregiver also may be a person who is not related to the child by blood, marriage, or adoption, but who has a positive relationship with the child. These types of individuals include, but are not limited to, stepparents, godparents, neighbors, and family friends [SSL §458-a(3)].

### 1. Approved foster homes

A letter of approval issued by the LDSS or VA allows individuals who are related within the second or third degree of the parent(s) or stepparent(s) of a foster child to receive remuneration from a LDSS or VA agency to provide foster care for a child under the age of 18 years. This age can be extended to 21 years or younger if a child who entered foster care before the age of 18 is attending a school, college, or university or is regularly attending a course of vocational or technical training [18 NYCRR 443.1(d)].

Relatives within the second or third degree to the parent(s) or stepparent(s) of a child include [18 NYCRR 443.1(i)]:

- Grandparents of the child
- Great-grandparents of the child
- Aunts and uncles of the child, including the spouses of the aunts or uncles
- Siblings of the child
- Great-aunts and great-uncles of the child, including the spouses of the great-aunts or great-uncles
- First cousins of the child, including the spouses of the first cousins
- Great-great grandparents of the child
- Unrelated persons where placement allows half-siblings to remain together in an approved foster home, and the parent(s) or stepparent(s) of one of the half-siblings is related to the person in the second or third degree

Relatives may become *certified foster parents* if they fall outside of the definition of an approved home (they are not within the third degree of parent or step-parent of the child) [18 NYCRR 443.1(f)].

See [Chapter 7](#) of this guide for more information on certified foster parents.

## B. Identifying and contacting potential kinship caregivers

Consistent with Federal law [42 USC 671(a)(29)], OCFS regulation [18 NYCRR 430.11(c)(4)] requires that relatives be identified, notified, and informed of the options under which the relatives may provide care for that child within 30 days of the child's removal from the home or earlier where directed by a court or as required by SSL §384-a.

The notice must explain the options the relative has under federal, state, and local law to participate in the care and placement of the child [18 NYCRR 430.11(c)(4)]. It must include the options available to the relative to either care for the child through foster care or by direct legal custody and any options that may be lost by the failure to respond to such notification in a timely manner.

OCFS regulations require the LDSS to exercise due diligence to identify and provide notice to all adult grandparents, all parents of a sibling of the child where such parent has legal custody of the sibling, and other adult relatives of the child, including adult relatives suggested by the child's parent, with the exception of grandparents, parents of a sibling of the child where parent had legal custody of the sibling of the child and/or any other identified relatives with a history of family or domestic violence, that the child has been or is being removed from the custody of his/her parent(s) [18 NYCRR 430.11(c)(4)].

An eligible relative or nonrelative may volunteer to provide foster care to the child or may be identified by the child, the child's parent(s) or stepparent(s), the court, a representative of the LDSS, or other interested party as potentially appropriate to provide foster care to the child.

For the purposes of this section, an eligible nonrelative may include, but is not limited to, a child's godparent, neighbor, family friend, or an adult with a positive relationship with the child [18 NYCRR 443.7(a)(2)].

Caseworkers must attempt to identify any adult relatives that are fit and willing to accept the child into their home during their time away from their parents. Parents should be asked to name relative and nonrelative resources as potential collateral contacts and also to develop a clearer picture of the family system. Questions may include:

- Who do you ask to watch your children in an emergency?
- If your car broke down, who would you call for a ride?
- If you are stressed and need to talk to someone, who would you talk to?

Where developmentally appropriate, children might be asked:

- Who do you spend holidays with?



### **Practice Tip:** *Finding fathers*

It is essential that caseworkers seek to identify and locate the non-respondent parent, typically the father, as a resource and to engage this side of the child's family. Various methods can be used to locate family members, such as a child support registry, Lexis Nexus, the putative father registry and social media.

See [Chapter 4](#) of this manual for more information on the Putative Father Registry.

- Who visits the house?
- Who is your favorite babysitter?

In addition to the persons noted above who must receive notice, other persons identified by the family and children should be contacted, even if they cannot be permanency resources. They may be able to generate other contacts, which can then be explored. They also may serve on the child's Service Plan review team or in other supportive activities.

Caseworkers must document in the case Progress Notes any information about an absent or non-respondent parent; the results of an investigation into the location of any relatives, including grandparents of the child; and the efforts to identify and provide notification to grandparents and other adult relatives.

## 1. Information and publications

Within 30 days after removal of a child from the custody of the child's parent or parents, or earlier where directed by the court, LDSSs must exercise due diligence in identifying the children's relatives. The LDSS must provide the child's relatives with notification that the child has been or is being removed from the child's parent or parents, that explains the options under which the relatives may provide care for the child, including both foster care and non-foster care options [[18 NYCRR §430.11\(c\)\(4\)](#)].

According to OCFS policy, publications must be provided:

At the time an identified person is notified of a child's removal:

- "Know Your Options: Kin Caring for Children" (Publication [5175](#) / [5175-S](#))
- "Make an Informed Choice: Kin Caring for Children" (Publication [5120](#) / [5120-S](#))

At the time a caregiver chooses to become a foster parent and when a child's foster care placement changes:

- *Know Your Permanency Options: The Kinship Guardianship Assistance Program* (Publication [5108](#)) See [11-OCFS-ADM-03](#) and [18-OCFS-ADM-03](#).

Publications are strongly encouraged but not required to be provided:

At the time a caregiver chooses to provide care outside of the foster care system or at any time it becomes known that a person is a non-parent caregiver:

- "Know Your Resources: Non-Parent Caregiver Benefits" (Publication [5194](#) / [5194S](#))

At the time an identified person is notified of a child's removal and at any time it may be helpful:

- *Having a Voice & a Choice: New York State Handbook for Relatives Raising Children* (Publication [5080](#) / [5080-S](#)). See [09-OCFS-ADM-04](#).

## C. Kinship foster home process

Foster care is intended to be temporary, with the permanency goal of returning the child to the parent, if possible.

If a relative or non-relative with a relationship to the child's family is interested in becoming a foster parent, he/she should begin the process as soon as possible after the child has been removed.

In regard to a child placed in accordance with FCA Article 10, where the child has already been placed in a nonrelative foster home and a relative comes forward to become that child's kinship foster parent, the relative may seek the assistance of the Family Court. The application must be brought to the court within six months of learning that the child was in foster care or twelve months from the date the child had been removed from the child's home. The court will hold a hearing on the application [[FCA §1028-a](#)] if:

- The relative is related to one of the parents of the child within the third degree of consanguinity;
- The relative expresses the desire to become a foster parent, and had not previously refused to be considered as a foster parent or custodian of the child, provided, however, that an inability to provide immediate care for the child due to a lack of resources or inadequate housing, educational or other arrangements necessary to care appropriately for the child does not constitute a previous refusal; and
- The LDSS has refused to place the child with the relative for reasons other than the relative's failure to qualify as a foster parent pursuant to 18 NYCRR Part 443.

The court then determines whether it is in the best interests of the child to be placed in foster care with the relative. If the court determines that it is in the best interest of the child to be placed in foster care with the relative, the court will direct the LDSS to commence an investigation of the relative's home for approval or certification within twenty-four hours. Unless and until the home is either emergency or fully certified or approved, a foster child may not be placed in the home. Kinship foster parents are held to the same standards and processes as certified nonrelative foster boarding homes [[18 NYCRR 443.3](#)].

For more information on the foster parent certification and approval process, refer to [Chapter 7](#) of this manual.

### 1. Emergency foster homes

Kinship families often come into contact with the child welfare system during a family crisis. New York allows a kinship caregiver of a child to be certified or approved as an emergency foster home if the child is being removed from his/her home by a court order or if the child's case record indicates a compelling reason to place him/her with a relative. Under these circumstances, safety and risk assessments and home studies are done on an expedited basis.

A relative within the third degree of the child or parent may be approved as an emergency relative foster home when the child is removed from the home [18 NYCRR 443.1(g) and 18 NYCRR 443.7(a)(1)]. The relative may self-identify or be identified by the child, the child's parents, the court, or the LDSS [18 NYCRR 443.7(a)(2)]. A relative who is not within the third-degree relationship with the parent of the child or a person identified as a close friend of the family may be *certified* as an emergency foster home [18 NYCRR 443.1(h)].

Before placing the child in the emergency foster home, the caseworker must [18 NYCRR 443.7(b)]:

- Obtain a signed and dated letter from the potential kinship caregiver indicating the exact relationship to the child and the child's parent(s), that the person is willing to provide foster care for the child and an assurance that he/she understands that the child is in the legal custody of the Commissioner of Social Services, and that by accepting responsibility for providing foster care for the child, he/she agrees to comply with foster care requirements, including, but not limited to those involving the role and authority of the certifying or approving authorized agency and the social services district with legal custody of the child to supervise the placement.
  - Perform an expedited home study that assesses the potential kinship caregiver's home to ensure that there is no apparent risk to the health and safety of the child.
  - Perform a home study on an expedited basis that assesses the person's family, focusing on the following factors:
    - The family's relationship with the child and the child's parent(s) or stepparent(s)
    - The care provided to other children in the home by the potential kinship caregiver
    - The potential kinship caregiver's knowledge of the circumstances and conditions that led to the need for the child's foster care placement
    - The past role of the potential kinship caregiver in helping and/or protecting the child from and/or preventing occurrences of abuse or maltreatment of the child
    - The present ability of the potential kinship caregiver to protect the child from abuse or maltreatment and the ability of the potential kinship caregiver to understand the need to protect the child from abuse or maltreatment
- If the home is found to be suitable after these requirements have been met, the home will be certified or approved as an emergency foster home or an emergency relative foster home for 90 days from the date of placement of the child in the home.
- A written agreement must be made between the LDSS/VA and the potential kinship caregiver within seven days of the child's placement providing the potential kinship caregiver will comply with relevant laws and regulations [18 NYCRR 443.7(d)].

Within seven days of placement, the LDSS or VA must [18 NYCRR 443.7(e)]:

- Submit a completed SCR database check form to OCFS.
- If the applicant or other person 18 years of age or older who resides in the home of the applicant resided in another state at any time during the five years preceding the

emergency approval or emergency certification, obtain the documentation necessary to enable the agency to request child abuse and maltreatment information from the applicable child welfare agency in each such state of previous residence.

- Submit a completed form to check the register of substantiated category one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs.

During that seven-day period, the LDSS/VA must obtain all required background check forms and submit a SCR database check request [18 NYCRR 443.7(e)].

If the emergency foster home receives final full approval on or before the 90th day of placement, the kinship caregiver may continue to provide foster care past the 90th day [18 NYCRR 443.7(g)]. The 90-day period may be extended if the kinship caregiver has otherwise satisfied all other requirements for final approval with the exception of a criminal history check, SCR database check, or the Justice Center register check [18 NYCRR 443.7(h)(1)].

## 2. Legal authority

Children who are placed in kinship foster care are still in the legal custody of the LDSS. Therefore, while kinship caregivers may make decisions regarding the daily care of the child while applying the reasonable and prudent parent standard to encourage the child's development through age or developmentally appropriate means<sup>1</sup> [18 NYCRR 441.25], any decisions made regarding medical care, education, and other significant activities must be made with the consent, where applicable, of the child's parent, LDSS, or VA agency [SSL §398]. Access to any government documents related to the child such as birth certificates, Social Security cards, etc. also remains with the LDSS or VA agency.

## 3. Agency and court oversight

The casework contact requirements for a foster child placed in kinship foster care are the same as those applicable to a foster child placed in a non-kinship foster home. While a child is in a kinship foster care placement, a caseworker from the LDSS or foster care agency must visit the relative's household at least once during the first month of placement. Thereafter, contacts with the kinship foster parent must be monthly, and at least one casework contact every three months must be at the foster home [18 NYCRR 441.21(d)]. Kinship foster parents must be informed of and asked to participate in service plan reviews. Kinship foster parents are also expected to participate in the plan for the child's visitation with parents, working in unison with the child's parents, LDSS and foster care agency; and bring the child to any necessary appointments including medical, dental, counseling, school-related and any other service providers [18 NYCRR 430.12].

The Family Court will be involved in the case as long as the child remains in foster care. Therefore, the court will continue to hold any permanency hearings that are required for a foster care case. As a foster parent, kinship foster parents will receive a copy of the

<sup>1</sup> OCFS. "Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard (15-OCFS-ADM-21)"

permanency hearing report 14 days prior to the hearing, receive notices of the hearings, and have the right to appear and speak at such hearings [FCA §§741-a, 1040 and 1089(b)]. For more detailed information on permanency hearings, refer to [Chapter 3](#) of this manual.

#### 4. Children of Native American descent

The placement of a child with a relative increases the child's exposure to his or her family's history and culture. Specifically, for children who have been identified as members of a federally recognized Native American tribe, the federal Indian Child Welfare Act (ICWA) of 1978 [25 USC 1901 et seq], "endeavors to preserve and strengthen Indian families and the Indian culture by requiring that, if at all possible, Indian children remain with their extended families, or at least within the Indian community."<sup>2</sup> Foster care placement preference provisions also apply to state-recognized Indian tribes [18 NYCRR 431.18].

According to the provisions established by ICWA, absent good cause to the contrary and unless the Indian tribe/nation has established its own set of placement preferences, the first preference of placement for a foster child that is a member of a recognized tribe is with a member of the child's family or extended family. Guidelines for ICWA compliance when placing a child with a relative are available on OCFS's Native American Services web page (<https://ocfs.ny.gov/main/nas/>).

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<sup>2</sup> National Indian Child Welfare Association. *Introduction to ICWA – Module 16, Out-of-Home Placement of Indian Children*.

## D. Other types of kinship placement

In addition to foster care, caseworkers must be prepared to discuss other types of placement with potential kinship caregivers, including the level of legal and financial support associated with each type of placement. OCFS provides helpful charts for reviewing permanency options with relatives and other suitable caretakers in its publication, *Know Your Permanency Options: The Kinship Guardianship Assistance Program* ([Publication 5108](#)).

In general, relatives and eligible nonrelatives of children may consider these options, in addition to foster care:

- Informal care
- Direct placement
- Legal custody
- Legal guardianship
- Adoption

### 1. Informal care

When a parent directly makes an arrangement with a relative or friend to take care of their child, it is called informal care. The parent may make this type of arrangement if they are sick, incarcerated, or overseas for military service. There is no court or LDSS involvement while the child is in the informal care of the relative or friend, and the arrangement is usually for a short-term, specific reason. Caregivers in an informal care arrangement do not have to submit to background checks or clearances from the Statewide Central Register (SCR) as the courts and the LDSS are not involved in this arrangement.

#### a. Decision-making authority

Informal care, per se, provides no decision-making authority to the informal caregiver. The informal caregiver does not have legal custody of the child, and therefore, no legal authority to make any lasting decisions for the child such as decisions related to medical care or education. The parent maintains legal custody and parental rights and can rescind the informal placement arrangement at any time.

Informal caregivers can obtain some decision-making authority over the child by entering into a “person in parental relationship” agreement with the parents of the child [[New York State General Obligations Law \(GOL\) §§5-1551 to 5-1555](#)]. Such designation applies to the status of a person in parental relation as addressed in Public Health Law §§2164 and 2504, and Education Law §§2 and 3212. In this signed agreement, the parent designates the informal caregiver as the “person in parental relationship” for the child and specifies the level of decision-making ability that caregiver has with the child [[PHL § 2504\(2\)](#)]. For example, the parent, in writing, states that the informal caregiver can make decisions regarding:

- Routine medical and dental services

- Routine mental health services
- Emergency hospital visits [PHL §2504(4)]
- Educational decisions, such as receiving special needs evaluations and services or counseling

More serious or long-term decisions, such as surgeries requiring anesthesia or enrollment in a new school district, are not covered under such agreements and still legally require direct approval from the child's parent. These agreements are not legally valid for more than six months and should be as specific as possible [GOL §5-1551]. A template form for a person in parental relationship agreement (OCFS-4940) is available on the OCFS website in both [English](#) and [Spanish](#).

#### b. **Financial assistance**

A caregiver may apply for certain financial supports during an informal care arrangement. These may include:

- Temporary financial assistance through the caregiver's LDSS
- Medicaid for the child's healthcare costs
- Supplemental Nutrition Assistance Program (SNAP) for the child's nutritional needs (formerly the food stamps program)
- Social security income, if the child is disabled

Caregivers may also apply for a nonparent caregiver grant, based on the income and resources of the child. Caregivers also may apply for financial assistance for the child care costs of the child, if the caregiver is working.

The OCFS Publication "Know Your Resources: Non-Parent Caregiver Benefits" (Publication [5194](#) / [5194S](#)) helps explain these options for caregivers. For more specifics on the financial assistance available to kinship caregivers and the children in their care, refer to [Section F](#) of this chapter.

## 2. Direct placement (Article 10)

In this type of arrangement, a child is removed from his/her home and placed directly with a relative or eligible nonrelative by the Family Court through a court order [FCA §1017(2)(a)(ii)]. In such a placement, the kinship caregiver has legal custody of the child. A relative or eligible nonrelative can request a direct placement by going before the Family Court judge and informing the LDSS caseworker assigned to the case or the birth parents may identify a suitable relative or family friend.

The kinship caregiver is granted temporary legal custody and is given the authority to care for the child with the protection of a court order. Parents may or may not agree to transfer legal custody to the relative. The custody arrangement usually lasts as long as the Article 10 case is before Family Court. Direct placement is also referred to as "Article 10 custody" or "N-Docket custody" in Family Court.

### a. **Roles of Family Court and LDSS**

Direct placement with a kinship caregiver is an alternative to the child going into foster care, but the child is still under the jurisdiction of the Family Court. The Family Court will order the LDSS to supervise direct placements and make regular visits to the kinship caregiver's home. The court will also issue an order specifying a visitation plan for the child to see his/her parents, as the direct placement is intended to be temporary. Relatives that have been granted temporary legal custody through direct placement are asked by the court to assist in following this visitation plan. Permanency hearings are required for children in direct legal custody arrangements [[FCA §1089](#)].

The court will continue to monitor the case until the child is returned to the parent or the relative is awarded a more permanent form of custody.

### b. **Financial assistance**

A kinship caregiver can apply for the same financial supports while they are in a direct custody placement as previously mentioned with informal care.

Direct placement cases usually result in the child eventually being returned to his/her parents, but this does not always occur. If a parent is unable to resolve the issues that resulted in the child's placement with the relative, the relative may be asked if they would like to pursue a more permanent, longer-term arrangement. These include:

- Legal custody (Article 6)
- Legal guardianship
- Adoption

It is important for the kinship caregiver to know that adoption subsidies are not available for children that have been adopted through a direct placement arrangement [[18 NYCRR 421.24, SSL §451\(1\)](#)]. In addition, as the child is not in foster care and the caregiver is not a foster parent, the placement is not eligible for Kinship Guardianship Assistance (KinGAP) payments.

## 3. **Legal custody (Article 6)**

Petitioning the court for legal custody under FCA Article 6 gives the kinship caregiver the legal authority to care for and make decisions regarding the child's care. Once custody is granted, the caregiver does not need to return to court unless someone else, such as the parent, applies to the court to change the custody arrangement. Parents of the child can petition the court to change the custody agreement at any time. Caregivers applying for legal custody do not have to submit to background and SCR checks unless the court orders such clearances.<sup>1</sup>

Transfer of legal custody can be done with or without the consent of the child's parent(s). If the child's parent(s) do not consent, the relative will have to demonstrate extraordinary

<sup>1</sup> OCFS. *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children* ([Publication 5080 / 5080-S](#))

circumstances to the court in order to obtain custody [FCA §1055-b]. Extraordinary circumstances may include:

- Abandonment by the parent
- Regular occurrences of neglect or abuse by parent
- Unfitness of the parent
- Extended period of residence with relative

New York law [Domestic Relations Law §72(2)] specifies that 24 continuous months of residence with a grandparent qualifies for an extraordinary circumstance, but a shorter period may also qualify, at the discretion of the court. Ultimately, the judge in Family Court determines whether the extraordinary circumstances merit giving legal custody to the relative caregiver [FCA §1055-b].

**a. Legal authority**

Parents maintain their parental rights while their children are in the legal custody of a relative. This means that, at any time, parents can file a petition for visitation with the child or to end the custody arrangement. Individuals with legal custody can make educational decisions, including enrolling a child in school [Domestic Relations Law §74, FCA §657], as well as medical decisions if authorized by the court [FCA §1055-b]. Relatives with legal custody can also enroll the child in their employer-based health insurance plans [FCA §657, Domestic Relations Law §74].

**b. Involvement with LDSS**

Under a private order of custody (Article 6), the LDSS is not responsible for supervising the placements via caseworker visits, etc. The LDSS can offer preventive services to help maintain the safety and well-being of the child in the kinship caregiver's home if there is a risk of the child having to enter foster care [18 NYCRR 423.3(b)].

**c. Financial assistance**

Kinship caregivers can apply for the same financial supports while they have legal custody of a child as those available during direct custody placements.

**d. Implications of choosing legal custody**

Once a kinship caregiver becomes a child's legal custodian, he/she cannot become the child's foster parent and the child is no longer eligible for foster care placement unless:

- CPS removes the child from the kin/relative's care due to allegation of abuse or neglect on the part of the kin/relative; or
- The child is placed in foster care due to behavioral issues and a PINS or JD petition is filed.<sup>2</sup>

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<sup>2</sup> Ibid.

Unless circumstances of the case significantly change and it is in the best interest of the child, legal custody arrangements are rarely changed by the courts. These custodial arrangements often last until the child reaches adulthood.

#### 4. Legal guardianship

Legal guardianship status is similar to a legal custody arrangement, with the exception of the following:

- Kinship caregivers applying for guardianship are required by the court to complete SCR checks for themselves and for anyone over the age of 18 living in the home [[Surrogate's Court Procedure Act \(SCPA\) §1704\(8\)\(vi\)](#)].
- Criminal background checks will be ordered for the potential guardians and anyone over the age of 18 living in the home [[SCPA §1704\(8\)\(v\)](#)].
- Guardians have full legal authority to apply for government records and documents, such as birth certificates and social security cards, on behalf of and for the child.
- Guardians can consent to medical care for the child [[SCPA §1706\(1\)](#)].
- Guardians can voluntarily place a child in foster care [[SSL §384-a](#)].

A petition for guardianship may be heard in either Family Court or Surrogate's Court. Legal guardianship can be a temporary arrangement, but most tend to be long term and last until the child reaches adulthood. Parents can petition the court to end the guardianship, but the court makes the ultimate determination [[SCPA §1707](#)]. In addition, once a kinship caregiver becomes a child's legal guardian under an Article 6 placement, he/she is not eligible to become that child's kinship foster parent and receive foster care subsidy payments or adopt the child and receive adoption subsidies [[18 NYCRR 421.24](#)], [[SSL §451\(1\)](#)].

#### 5. Permanent guardianship

If a child has been freed for adoption or both parents whose consent to the adoption of the child have died during the legal guardianship of a kinship caregiver, the court can appoint that relative as the permanent legal guardian of the child. The permanent guardian can make medical and educational decisions on behalf of the child and enroll him/her in a health insurance plan. The permanent guardianship can continue until the child is 21, if the child consents. Permanent guardians can consent to the adoption of the child [[FCA §661\(b\)](#)].

#### 6. Standby guardianship

Parents who have a potentially fatal, chronic, or progressive illness can choose to name a standby guardian to take care of their children when they become unable to do so. A standby guardianship is created by filing a petition with the court or signing a written statement that is later filed with the court. Until the guardianship begins, the parent of the child maintains full parental rights. The standby guardianship can be effective until the child reaches the age of 21, if the child consents. Should the child legally marry before his or her 18th birthday, the guardianship will end. Standby guardianship allows ailing parents to make plans for the care of their child while they are still able to do so [[SCPA §1726](#)].

## 7. Kinship Guardianship Assistance Program (KinGAP)

New York State's Kinship Guardianship Assistance Program (KinGAP), provides monthly payments and other benefits to relative guardians of children that have been discharged from foster care [SSL §§458-a to 458-f]. KinGAP provides assistance to relatives and certain nonrelative caregivers who obtain legal guardianship, encouraging another permanency option for children in care.<sup>3</sup>

### a. *Child's eligibility requirements*

A child is eligible for KinGAP assistance payments if the following requirements are met [18 NYCRR 436.3]:

- The child has been in foster care in the home of the prospective relative guardian for at least six consecutive months
- The prospective relative guardian must have been a fully certified or fully approved foster parent of the child for at least six months prior to the application for KinGAP.
- Return to home or adoption are not appropriate permanency options for the child.
- The child demonstrates strong attachment to the prospective relative guardian.
- The prospective relative guardian demonstrates a strong commitment to permanently caring for the child.
- Age-appropriate consultation has been held with the child; if the child is at least 14 years of age, the child has been consulted about the proposed kinship guardianship; and if the child is at least 18 years of age, he/she has consented to the guardianship.
- If the child was placed into care due to an Article 10 removal, all fact-finding hearings [FCA §1051] and the first permanency hearing [FCA §1089(a)(2)] have been completed.
- If the child was placed into care for another reason, the first permanency hearing has been completed.
- It is in the child's best interests for the foster parent to become the child's legal guardian

The child remains eligible for KinGAP payments should a successor guardian becomes responsible for the child [18 NYCRR 436.3(f)].

### b. *Assistance payments*

Once approved, the relative guardian and LDSS enter into a written agreement that specifies the amount of the monthly assistance payments, and payments for other expenses, including the child's medical coverage [18 NYCRR 436.4]. After the agreement has been signed, the court will issue letters of guardianship and the child will

<sup>3</sup> OCFS "Kinship Guardianship Assistance Program" [11-OCFS-ADM-03]

be officially discharged from foster care. Payments will begin upon the issuance of letters of guardianship and the child's discharge from foster care [18 NYCRR 436.5].

In addition, the LDSS will then reimburse the guardian for expenses incurred during the process of obtaining guardianship, as non-recurring guardianship expenses [SSL §458-c, 18 NYCRR 436.7].

KinGAP assistance payments may continue until the age of 21, depending on the circumstances of the case [SSL §458-b, 18 NYCRR 436.5(e)].<sup>4</sup> Payments may be made until the reaches the age of 21 irrespective of the child's age when the KinGAP agreement took effect if the child consents to the continuation of the appointment of the guardian upon reaching the age of 18, the court grants the continuation, and the child is [SSL §458-b(7)(a)]:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides post-secondary or vocational education;
- Employed at least 80 hours per month;
- Participating in a program or activity designed to promote or remove barriers to employment; or
- Incapable or any of such activities due to a medical condition, as supported by regularly updated information in the child's case record.

The LDSS will send annual notification letters to guardians, reminding them of their legal obligations to the child [18 NYCRR 436.6].

### c. **Successor guardianships**

A successor guardian is someone who is named by a prospective relative guardian or a relative guardian who is in receipt of KinGAP payments, in the agreement or in an amendment to the agreement, and approved by the LDSS who has agreed to assume all responsibilities for the care of the child should the relative guardian die or become incapacitated to the point where he or she can no longer care for the child [SSL §458-a(6), 18 NYCRR 436.1(i)].<sup>5</sup>

## 8. Adoption

Once a foster child has been freed for adoption, a potential permanency plan is for the child to be adopted by the current foster parent. If the child has been in the care of the same foster parents for more than one year and they are willing and able to adopt the child, the foster parents will be given preference and first consideration [SSL §§374(1)(a) and 383(3)]. The requirements for a kinship foster parent wishing to adopt a child are the same as for all foster parents. One of these requirements is that a foster parent would have to become an approved foster parent.

For details about adoption as a permanency option, see [Chapter 6](#) of this manual.

<sup>4</sup> Ibid.

<sup>5</sup> OCFS. "Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian" (16-OCFS-ADM-10)

## E. Documenting work with kinship caregivers

Caseworkers are required to document their work with kinship caregivers in the Family Assessment and Service Plan (FASP) and in progress notes [18 NYCRR 428.5 and 428.6]. This, among other things, should include diligent efforts made to identify kin/relatives, casework contacts [18 NYCRR 441.21(d)], visits with relatives, and examination of the kin/relative's home [18 NYCRR 428.5(c)(10) to (12)].

Diligent efforts to identify kinship caregivers should be tracked under the “Activities Prior to Placement” tab in the CONNECTIONS system (CONNX). If applicable, work must be documented related to maintaining the child's continuity of environment and culture, if the child is identified as a child of a Native American tribe.

The Permanency Progress/Concurrent Planning window in CONNX is used to document placement with kin/relatives for both non-freed and freed children. If the children will be placed in a non-LDSS custody type of placement, the caseworker must document record this in the “Non-LDSS Custody-Relative/Resource Placement Connections” window. This window must be used in cases of direct placement, custody arrangements, and guardianships.

If the child is being discharged from foster care to a custodial arrangement or guardianship, the caseworker must select the discharge type “Home/Relative/Other Caretaker.” Under this discharge type, the caseworker must document why the discharge to a relative is the most safe and appropriate decision for the child. This information is entered in the following windows:

- Situations/Behaviors/Concerns
- Decision Support
- Needs/Resources

For more information on documenting casework with relatives, refer to the *OCFS Family Assessment and Service Plan Guide*. Additional guidance is provided in the OCFS Local Commissioners Memorandum, “Accurate Reporting of Kinship Foster Care Placements” ([14-OCFS-LCM-15](#)).

## F. Resources for kinship caregivers

Kinship care can be complex and difficult to navigate, especially for caregivers who are not familiar with the intricacies of the child welfare system. OCFS provides information on the [kinship page](#) of its website, which allows the user to:

- Search for available kinship services at the local, county level
- Link to publications, websites, other state and federal programs, and reports
- Access information related to KinGAP

OCFS also has published documents specifically designed to help inform relatives that are raising children. See [Section A](#) of this chapter.

### 1. Kinship Navigator

The Kinship Navigator program is supported by state funds and is designed to provide information and resources to kinship caregivers. The New York State Kinship Navigator website (<http://www.nysnavigator.org/>) offers:

- Various online resources, including educational videos
- Legal resources, including legal service organizations with experience in kinship cases
- A map of NYS counties with kinship programs, as well as other OCFS-funded kinship programs across the State
- Resources on kinship-related policies
- Informational guides on special topics such as children with incarcerated parents

The Kinship Navigator program also has representatives available to present to interested organizations, including at the local level. Contact information for Navigator representatives is available on the website.<sup>1</sup>

### 2. Financial resources

There are a number of financial resources available for kinship caregivers and the children they care for with varying eligibility criteria. Caseworkers should be familiar with the types of financial resources available so they can provide support to kinship caregivers. The OCFS Publication “Know Your Resources: Non-Parent Caregiver Benefits” (Publication [5194 / 5194S](#)) helps explain these options for caregivers.

Some resources are listed below. Relatives also should be encouraged to visit [www.mybenefits.ny.gov](http://www.mybenefits.ny.gov) to quickly check their eligibility for various benefit programs.

**Temporary Assistance:** Monthly temporary assistance cash grants to help defray the cost of caring for the child. The amount of the temporary assistance received is based on need.

<sup>1</sup> OCFS. “NYS Kinship Navigator Program” ([07-OCFS-INF-05](#))

Temporary assistance on behalf of the child only is called a “non-parent caregiver case” and only the child’s income and resources are counted. Relatives should contact the LDSS temporary assistance office.

**Child Support:** If the kinship caregiver has not legally adopted the child, the child’s birth parents are expected to offer some level of financial support to the caregiver [FCA §413]. The court can order the birth parents to pay child support to the relative taking care of the child.

**Supplemental Nutrition Assistance Program (SNAP):** This program, formerly called Food Stamps, helps families purchase healthy food. Detailed information on eligibility requirements and application procedures is available at <http://otda.ny.gov/programs/snap/>.

**Women, Infants and Children (WIC):** WIC offers assistance with the purchasing of food and nutritional screenings for:

- Low-income pregnant women
- Women with infants less than one year old
- Children under the age of 5 with identified nutritional problems

Kinship caregivers may apply for WIC benefits if they or the children in care meet any one of these criteria. For more information, contact the local county temporary assistance office.

**Supplemental Security Income (SSI):** If the child is under the age of 18 and is blind or disabled, caregivers may also apply for SSI disability benefits on their behalf. Caseworkers should instruct relatives to contact their local Social Security Office or call 1-800-772-1213 for more information.

**Old-Age Survivors and Disability Insurance (OASDI):** If a child is under the age of 18 and is being cared for by a grandparent, the child may be eligible for OASDI. The child’s parents must be dead or disabled. More information on this eligibility program is available at the local Social Security Administration office.

**Tax Credits:** Kinship caregivers may be eligible for tax credits and should be referred to [www.irs.gov](http://www.irs.gov) or their tax preparer.

## Chapter 6: Permanency Planning Options

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## Chapter 6

# Permanency Planning Options

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Extended stays in foster care, especially those that involve frequent transfers from one foster home to another, often have a negative impact on children's well-being. The overarching goal for each child in care is to identify safe and suitable permanency options and achieve permanency goals as quickly as possible, within the context of safety and the child's best interests. A child's exit from foster care to a safe, permanent home with caring adult relationships is the responsibility of each worker assigned to the case.

The time frame for setting a PPG is driven by federal and state requirements for legally freeing a child for adoption. A child who has been in foster care for 15 of the most recent 22 months must either be discharged from care or the LDSS must file a petition to terminate parental rights (TPR) [[SSL §384-b\(3\)\(I\)](#)]. This often results in a PPG of adoption. See [Section A.1](#) of this chapter for details and exceptions to the requirement to file a TPR petition.

An action to legally free the child must be initiated within 30 days of the establishment of the permanency planning goal of adoption, and the child must be freed within 12 months after the establishment of the permanency planning goal of adoption [[18 NYCRR 430.12\(e\)\(1\)](#)].

Permanency assessment and planning are ongoing, dynamic processes. Caseworkers and families must continuously reassess needs, progress, and options; and adjust plans accordingly. Truly effective permanency planning requires looking beyond the child's discharge from foster care to what is needed to sustain and support the long-term stability of the child's permanent family/connections. To support this goal, state and federal law requires that the Family Court review each foster child's situation, including children in care who have been freed for adoption, during regular permanency hearings (see [Chapter 3](#) of this guide).

Permanency planning goals for children in foster care are set forth in OCFS regulation and policy [[18 NYCRR 430.12](#)].

## A. Types of permanency planning goals (PPGs)

### 1. Return to parents (reunification)

The majority of children placed in foster care are discharged to their parents. Reunification is the usual PPG for children at the time of initial placement. Each child with a PPG of return to parents and who has been in care for 15 of the most recent 22 months, must either be discharged from care or the LDSS must file a petition to terminate parental rights [SSL §384-b(3)(l) and 18 NYCRR 430.12(d)]. This standard may be waived based on a case by case determination by LDSS if the child is cared for by a relative, the parent is incarcerated or is a patient in a residential substance abuse treatment program; the agency has not provided the parents with the services they need in order for the child to be safely returned; or there is a compelling reason to not terminate parental rights, including, but not limited to, where adoption is not the appropriate permanency goal for the child.

When the child cannot be returned home safely, another permanency goal must be established. Once the goal is established, the LDSS must then make reasonable efforts to reach that goal. For more information, see [Section C](#) of this chapter.

### 2. Discharge to adoption

For children who are not legally free for adoption, an action to legally free the child must be initiated within 30 days of the establishment of the permanency planning goal of adoption. The child must be freed within 12 months after the establishment of the permanency planning goal of adoption [18 NYCRR 430.12(e)(1)].

Children who are legally free for adoption but not in an adoptive home must be placed in an adoptive home within six months after he/she has been freed for adoption. There are exceptions for children placed in facilities operated or supervised by the NYS Office of Mental Health (OMH) and the NYS Office for People With Developmental Disabilities (OPWDD) [18 NYCRR 430.12(e)(2)]. For more information, see [Section D](#) of this chapter.

### 3. Discharge to guardianship

The Family Court can establish permanent guardianship for a freed or orphaned child in LDSS custody. The court has the authority to appoint a permanent guardian for a child as an alternative to adoption. This legal status can continue until a child's 21st birthday, with the child's consent. The permanent guardian has all the necessary rights and responsibilities to care for the child, including those relating to the child's protection, education, care and control, health, and education, and can consent to the child's adoption [FCA §661(b)].<sup>1</sup> For more information, see [Section E.1](#) of this chapter.

### 4. Placement with a fit and willing relative

A relative or "other suitable person or persons" may petition the court for guardianship or custody of a child who has been placed in foster care [FCA §1089-a(a)]. *Relative* means any

<sup>1</sup> OCFS. "New Statutes Affecting Kinship Care: Chapters 404 and 519 of the Laws of 2008" ([09-OCFS-ADM-05](#)).

person related to the child by blood, marriage or adoption, excluding parents, putative parents, and relatives of putative parents [FCA §1012(m)]. *Suitable person* means any person who plays or has played a significant positive role in the child's life or in the life of the child's family [FCA §1012(n)].

The law sets forth the criteria necessary for the court to grant such a petition, including where the parent consents or refuses to consent to the petition. The Family Court must find that it is in the child's best interests, the child's safety will not be jeopardized without supervision or services, and the arrangement will provide the child with a safe and permanent home.

In addition, all parties must consent. If the parent(s) fail to consent, the court must find that extraordinary circumstances exist that support granting the guardianship or custody petition. If a party other than the parent fails to consent, the court must find that granting guardianship or custody is in the best interests of the child. For more information, see [Section E.2](#) of this chapter.

## 5. Discharge to APPLA

Another planned permanent living arrangement with a permanency resource" (APPLA) is a permanency planning goal designed to assist foster care youth in their transition to self-sufficiency. This option connects youth to adult permanency resources, equipping them with life skills and, upon discharge, connecting them with any needed community and/or specialized services. An adult permanency resource is a caring, committed adult who has been determined by the LDSS to be an appropriate and acceptable resource for a youth; is committed to providing emotional support, advice and guidance to the youth; and agrees to assist the youth as he/she makes the transition from foster care to responsible adulthood.<sup>2 3</sup>

There are also youth in care who are deemed to have a goal of APPLA even though their actual goal is different. A youth who is deemed to have a goal of APPLA is a youth who is 16 years of age or older, has resided in foster care for at least 12 months within the past 36 months, and has a current PPG of discharge to parents or adoption.

In addition, there are youth no longer in care who are deemed to have been discharged to APPLA. A youth who is deemed to have been discharged to APPLA is a youth who is 16 years of age or older, who resided in foster care for at least 12 months within the past 36 months, and who was discharged to parents or relatives [18 NYCRR 430.12(f)]. The significance of being "deemed to have a goal of APPLA" or "deemed to have been discharged to APPLA" is that the requirements to provide services to such youth (both while in care and post-discharge) are the same as for those youth with a goal of APPLA."

## 6. Discharge to adult residential care

Discharge to adult residential care is an appropriate permanency planning goal only for youth whose necessity of placement is based in whole or in part on a "child service need,"

<sup>2</sup> OCFS. "Planning for a Successful Adulthood: Another Planned Permanent Living Arrangement with a Permanency Resource (APPLA) for Youth 16 Years of Age and Older" ([15-OCFS-ADM-19](#))

<sup>3</sup> OCFS. "Transition Planning with Youth for a Successful Discharge" ([15-OCFS-ADM-20](#))

and for whom the service needs arise out of a factor other than the child's behavior. Before this PPG is chosen, the LDSS must consider alternative permanency goals, including "discharge to parents or relatives" and "discharge to adoption," and the LDSS director must review and approve the establishment of this goal [18 NYCRR 430.12(g)(1)(i)].

## B. Concurrent planning

Concurrent planning seeks to provide an alternative path to permanency if reunification cannot be achieved. It is to be developed and implemented in tandem with the reunification plan, not instead of it. The primary goal of concurrent planning is to more quickly move children in foster care from the uncertainty and impermanence of foster care to the security of a permanent family. Concurrent planning is a tool to help achieve:

- Safety for children
- Early permanency decisions for children
- Reductions in length of stay in foster care
- Reductions in the number of moves and relationship disruptions a child experiences while in foster care

For concurrent planning to be effective, the caseworker needs to engage all members of the child's significant network, including foster parents, in planning for the child's well-being. The LDSS or VA team, including the caseworker, supervisor and legal staff needs to maintain frequent communication about case plans, progress and decisions. Judges, attorneys for the child, and parents should be helped to understand the principles and ramifications so that concurrent planning activities are understood and determined to be diligent efforts in the child's best interest, and not as a way to circumvent the need to work diligently with parents in pursuit of permanency through reunification.<sup>1</sup> Use of concurrent planning is best practice and not a mandate.

### 1. Concurrent planning steps

Successful concurrent planning entails several steps, including a full disclosure discussion with parents regarding the impact of foster care on children; the children's need for safety and permanency; and the agency's role and the parent's role in securing a safe, permanent family for children as quickly as possible. Often this means asking parents to identify individuals who might raise their children in the event they are unable to do so; or asking the child, if old enough, to identify alternate caretakers. This discussion can be a way of helping parents understand the seriousness of the situation and gives parents a role in planning for their children, even if the children are unable to return home.

### 2. Communication with foster parents

When a decision has been made to use concurrent planning, the ideal placement for these children is with a foster family that has made a commitment to provide foster care for as long as a child needs it and to adopt the child if the child is legally freed. This has been called an "at risk" placement, which means there is some degree of risk that a child will not be freed for adoption and will be returned to his or her parent(s).

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<sup>1</sup> OCFS. "ASFA Safety and Permanency" ([00-OCFS-INF-05](#))



### **Practice Tip: Evaluating progress toward permanency**

In the continuous evaluation of progress toward the PPG, focus on the goal of achieving a permanent home for the child within a reasonable period of time. Consider the following:

- Changes in behavior (not merely compliance with services) by the child’s parents
- Changes in circumstances, such as living arrangements, people living in the home, or court/law enforcement actions
- Efforts made by the LDSS, such as providing services; reaching out to or including significant others/extended family; providing or offering other supports; and making efforts to inform parents of their options, their responsibilities, and the consequences of non-compliance with the Service Plan
- Efforts made to support and encourage parents’ participation in decision-making
- The parents’ input and involvement in planning for the child’s discharge, such as participation in meetings, court hearings, case reviews, or other opportunities
- Any barriers to timely achievement of the PPG, such as inability to identify a permanent resource; little or no interest demonstrated by the parent(s); lack of resources; unavailability or inaccessibility of needed services; parents’ cognitive, medical, or mental health limitations; or parents’ incarceration or hospitalization.
- For a child freed for adoption, efforts to identify and cultivate relationships with potential permanency resources and/or resource connections for the child

Source: *OCFS Family Assessment and Service Plan (FASP) Guide for Caseworkers*, p. 8-27

“At risk” placements can provide a framework for stability and security, even if the child is not immediately available for adoption. The child’s permanency is planned and structured as part of the placement. Foster parents make a specific commitment to the child that is far deeper than that of traditional foster care. Typically, they have been certified as both foster and adoptive parents and have adopted foster children in the past.<sup>2</sup>

Foster parents need a clear set of expectations about their role in the permanency planning process for particular children. They should be encouraged to attend service plan reviews where frank discussions of permanency progress and options should take place. This is particularly critical when the foster parents are the permanency resource for the child in the event that the child cannot be reunified with his/her parents.

Foster parents should be able to say to the child, “You will either be going home or remaining here with us.” At the same time, they must understand that they have an obligation to assist the birth parents in encouraging reunification. This is a challenging role and is an important component of training and supporting foster parents who will or may be involved with a concurrent planning case. Caseworkers must keep foster families well-versed on the progress of the case and assist them in dealing with the ups and downs of the permanency planning process.<sup>3</sup>

<sup>2</sup> OCFS. “Guidelines for ‘At Risk’ Placement of Certain Foster Children” ([85-OCFS-INF-05](#)).

<sup>3</sup> OCFS. “ASFA Safety and Permanency” ([00-OCFS-INF-05](#))

Because each case is unique, there needs to be open communication at the onset and throughout the life of the case between the caseworker, the birth parent, and the foster parent concerning the need for concurrent planning, should a child not be able to return home.

## C. Reasonable/diligent efforts to achieve permanency

Federal and state law, regulations, and policy have long required that LDSSs and VAs make reasonable efforts to preserve and reunify families known to the child welfare system. The child's safety is the paramount concern in determining the extent to which reasonable efforts should be made [FCA §1052].

OCFS regulations address the requirement of a LDSS to be exercising diligent efforts to achieve permanent discharge of a child from foster care if the requirements of 18 NYCRR 430.12 are met. OCFS regulations also address the requirement to document the reasonable efforts made to finalize the child's permanency plan [18 NYCRR 428.5]. The initial FASP must address the reasonable efforts made to prevent or eliminate the need or placement [18 NYCRR 428.6]. The periodic service plan review must review the reasonable efforts made to achieve the child's permanency planning goal [18 NYCRR 428.9].

The term "diligent efforts" also appears in relation to the elements required to support a court determination to terminate parental rights. Diligent efforts are defined in a proceeding to terminate parental rights on the basis of permanent neglect as reasonable attempts by the LDSS or VA to assist, develop, and encourage a meaningful relationship between a parent and child [SSL§384-b(7)(e)].

When a child's permanency plan is reunification, reasonable efforts must be provided towards reunification to enable the child to return home safely. When the permanency plan is adoption, guardianship, or another permanent living arrangement other than reunification, reasonable efforts must be made to finalize the child's permanency plan. Court orders must specify that for each child in placement, reasonable efforts must be made to achieve whatever permanency goal has been chosen, whether it be return home, adoption, or any other permanency plan.<sup>1</sup>

When a child is placed in foster care, there must be a periodic, case-specific finding by the court, documented in the court order, that reasonable efforts are being made to enable the child to return home safely or to finalize the child's permanency plan [FCA §1089(d)]. For cases other than JD or PINS placements, the initial determination must be made within six months of the child entering foster care, which is defined as the earlier of the date of the fact finding of abuse or neglect or the date that is 60 days after removal of the child from his or her home [FCA §1089(a)(2)]. Thereafter, a reasonable efforts determination must be made at every permanency hearing. For JD and PINS placements, the determination must be made within 2 months of the child entering foster care.<sup>2</sup>

The Family Court judge determines at permanency hearings whether reasonable efforts have been made by the LDSS to enable the child to return home safely or to finalize the child's permanency plan if the discharge goal is other than return to parent. The LDSS bears the burden of proving that these efforts have been made [FCA §1089(d)]. The caseworker's testimony and thorough documentation must provide sufficient information to allow the judge to make that determination.

<sup>1</sup> OCFS. (2008). *Journey Through Adoption Curriculum*, p. 284

<sup>2</sup> OCFS. [Adoption Services Guide for Caseworkers](#), Chapter 3, p. 3-2

A failure to provide evidence that the requirements have been met is considered to be a failure to make diligent efforts to achieve the permanent discharge of the child [18 NYCRR 430.12(b)]. Failure to secure a timely court determination of reasonable efforts will also impact availability of federal reimbursement for an otherwise Title IV-E eligible foster child. The [OCFS Eligibility Manual](#) has additional information on Title IV-E eligibility.

## **1. Parents who are incarcerated or in residential treatment**

Parents who are incarcerated or who are in a residential substance abuse treatment program have the same visitation rights as parents in the community, provided that these visits are in the child's best interests. LDSSs and VAs are required by law to inform incarcerated parents about their rights and responsibilities (including visiting).

Case consultation with a parent must be in person, unless it is impracticable or would be harmful to the child. When in-person case consultation or visits are impracticable, these consultations may be done through the use of available technology to facilitate parents' participation in Service Plan reviews [SSL §409-e(2)].

When determining whether the parent's continued involvement in the child's life is in the best interests of the child, LDSSs and VAs are encouraged to consider the following:

- Whether the parent was the child's primary caregiver prior to the child's placement;
- The parent's role in the child's life prior to the parent's incarceration or residential substance abuse treatment
- The parent's current role in the child's life
- The age of the child at the time of the child's placement
- The length of the parent's period of incarceration or residential treatment
- The length of time the child has been in foster care
- The child's primary attachment
- Any special needs or vulnerabilities of the child
- Whether the parent has addressed safety concerns, if any<sup>3</sup>

The parent/child assessment and determination of the child's best interests must be documented in the FASP and all efforts made to reach the permanency goal of the child must be documented in the case record.

During the child's placement, LDSS and VA caseworkers are to make suitable arrangements with a correctional facility, or a residential substance abuse treatment program, for the parent to visit with the child within the facility or program unless such visiting would be harmful to the child.<sup>4</sup>

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<sup>3</sup> OCFS. "Incarcerated Parents and Parents in Residential Substance Abuse Treatment with Children in Foster Care: Termination of Parental Rights and Other Issues" ([11-OCFS-ADM-07](#))

<sup>4</sup> Ibid.

## 2. When reasonable efforts are not required

Although reasonable efforts to preserve and reunify families are required for almost every child welfare case, under some specific case circumstances, the LDSS may seek an order from the Family Court to obtain a finding that reasonable efforts are not required in a particular case. Reasonable efforts are not required when the court determines that:

1. The parent has subjected the child to aggravated circumstances [[FCA §1012\(j\)](#)]. These include:
  - Severe abuse, as defined in SSL §384-b(8)(a) and (b), repeated abuse, or post-placement abuse
  - Failure to plan for or to engage in services necessary to eliminate the risk of abuse or neglect that caused the child's removal from the home, over a period of at least six months from the date of removal and has failed to secure services on his/her own and, after being informed by the court that such admission could eliminate the requirement that the LDSS provide reunification services, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services
  - Abandonment of a newborn (30 days old or younger) in a safe place, as defined in the [New York State Abandoned Infant Protection Act](#)
2. The parent of the child has one or more prior criminal convictions. These include:
  - Murder or voluntary manslaughter of another of his/her children
  - Attempting, soliciting, conspiring, or facilitating murder or manslaughter, and the intended victim was the child or another child of the parent
  - Assault (aggravated, first-, or second-degree) upon the child or another child of the parent when the child was less than 11 years old and sustained serious physical injury
3. The parent of such child has been convicted in another jurisdiction of an offense that includes all of the elements of any of the crimes noted above and the victim of such offense was the child or another child of the parent
4. There has been a prior involuntary termination of parental rights to a sibling of the child, unless the court determines that providing reasonable efforts would be in the best interests of the child [[FCA §1039-b](#)].

For more information, please see the [OCFS Adoption Services Guide](#), Chapter 3.

If the court rules that no reasonable efforts are required due to one of the circumstances above, the court must hold a permanency hearing within 30 days of the finding and determine the appropriateness of the permanency plan for the child. The LDSS or VA must take steps to finalize the permanency plan, including filing a termination petition, in accordance with SSL §384-b.

## D. Discharge to 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. When the LDSS has determined that the child's parent(s) are unable or unwilling to provide a safe, permanent home for the child in a timely manner consistent with the needs of the child, consideration should be given to the appropriateness of adoption as the child's permanency goal.<sup>1</sup>

A child can become available for adoption as a result of:

- Death of parents
- Abandonment by the parent or guardian
- Permanent neglect by the parent or guardian
- Parent's inability to care for the child, both now and in the foreseeable future, due to mental illness or intellectual disability
- Severe or repeated abuse by the parent or guardian
- Surrender of parental rights

The caseworker, in consultation with supervisors and LDSS attorneys, must determine the action that is most appropriate to remove the rights of each of the birth parents, either by seeking a surrender from the parent(s) or filing a petition in Family Court to terminate parental rights. A determination must be made by the LDSS that termination of parental rights is in the child's best interests before initiating action to seek a surrender or terminate parental rights. If the child's PPG is adoption, the plan for the child must be to use all available resources to secure an adoptive family through which the child can receive the needed love and care of parents and the security of a safe, permanent home [18 NYCRR 421.2(a), (b) and (c); 18 NYCRR 431.9].

Counties vary in practice as to whether the Family Court will approve a change in PPG to adoption before parental rights are terminated and/or before a prospective adoptive parent is identified. While not the predominant practice, some judges will not approve a PPG of adoption until parental rights have been terminated. In some cases, judges will only allow the termination of parental rights when prospective adoptive parent(s) have been identified, in order to avoid creating what is sometimes referred to as "legal orphans." Caseworkers should seek guidance from supervisors and agency attorneys to become familiar with preferred procedures.

### 1. Surrender of a child for adoption

A surrender is when a child's birth parent voluntarily transfers guardianship and custody of the child for the purpose of placement for adoption. A non-adversarial process, it is generally the simplest method of freeing a child for adoption. For a child in foster care, the surrender may be done before a court (a judicial surrender), or by a signed and notarized surrender

<sup>1</sup> OCFS. [Adoption Services Guide for Caseworkers](#), Chapter 2

document executed outside of court (an extra-judicial surrender) that is approved by a court may be used to transfer guardianship and custody of the child to an authorized agency [SSL §383-c]. The parent who signs the surrender no longer has the legal right to approve or disapprove of the child's adoption placement.

If a parent or guardian of a child in foster care asks to surrender a child, the LDSS must determine whether the surrender is in the best interests of the child [SSL §398(6)(f)]. If it is determined that the surrender is in the best interests of the child, the LDSS must make arrangements for either a judicial or extra-judicial surrender of the guardianship and custody [18 NYCRR 421.6(a), SSL §383-c].

### ***a. Judicial surrender***

Virtually all surrenders accepted by LDSSs are judicial surrenders. As such, they are irrevocable when signed (except for the very unusual situation of the surrender being successfully challenged in further court proceedings on the ground of fraud, duress, or coercion).<sup>2</sup>

The judicial surrender of a child in foster care may be executed before any Family Court or Surrogate's Court in the state, unless the child being surrendered is in foster care as a result of an Article 10 or 10-A proceeding or a transfer of custody. In these cases, the surrender must be executed in the Family Court where the original proceeding took place and the court should assign the case to the same judge, where practical [SSL §383-c(3)(a)]. A surrender of a child by a parent or guardian who himself or herself is in foster care must be executed in Family Court [SSL §383-c(7)].

For this type of surrender, use OCFS [Form 4315](#), "Judicial Surrender," which is also available in [Spanish](#). For additional information, refer to the OCFS [Adoption Services Guide for Caseworkers](#), Chapter 4.

A surrender executed and acknowledged before a court in another state satisfies the requirements of this section if it is executed by a resident of the other state before a court of record that has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding is filed as part of the adoption proceeding in New York State showing compliance with the standards applicable to the execution of a judicial surrender in New York State [SSL §383-c(3)(a)].

### ***b. Extra-judicial surrender***

An extra-judicial surrender of a child in foster care must be signed in the presence of at least two witnesses before a notary public [SSL §383-c(4)(a)]. There are specific standards and limitations on who the witnesses may be. Such surrender must be approved by the court in which the adoption proceeding is expected to be filed or, if not known, in the Family Court or Surrogate's Court in which the agency that accepted the surrender has its principal office [SSL §383-c(4); 18 NYCRR 421.6(e)]. For this type of surrender, use OCFS [Form 4316](#), "Extra-Judicial Surrender," which is also available in [Spanish](#).

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<sup>2</sup> "Frequently Asked Questions About Adoption," accessed at <https://gdwo.com/biographies/faq.php>

### ***c. Persons authorized to sign surrenders***

Social Services Law authorizes the following people to sign either type of surrender:

- Both parents, if living, or the surviving parent if one parent is dead
- The remaining parent, if one of the parents has abandoned the child for the previous six months. For a child in foster care, abandonment must be in accordance with the abandonment provisions that apply to TPR proceedings (see [Section 2](#) of this chapter)
- The mother, if the child was born out-of-wedlock, and the father of such child, if his consent would be required for the child’s adoption (see [Section 2](#) of this chapter)
- The child’s guardian, with the approval of the court or official who appointed the guardian, if both parents are deceased or if the mother of a child born out-of-wedlock is deceased [[SSL §383-c\(1\)](#)].

No parent should be allowed to sign a surrender instrument unless he/she has been completely informed by the agency of the personal, emotional, and legal effects of the document. In an extra-judicial surrender, a parent’s lack of understanding of the legal consequences of signing the surrender could be a basis for a future challenge to the validity of the surrender [[SSL §383-c\(6\)\(d\)](#)]. The parent should be reminded of his/her right to consult with counsel before signing the surrender.

### ***d. Conditional surrender***

A “conditional surrender” is when the surrender document for either a judicial or extra-judicial surrender includes terms and conditions that are mutually agreed upon between the parent and the agency. This may involve the parent’s wishes for continued communication or contact with the child or the adoption of the child by a particular designated person or persons [[SSL §§383-c\(2\)](#) and [384\(2\)](#); [18 NYCRR 421.6\(l\)](#)]. For surrenders executed in accordance with [SSL §383-c](#), OCFS form [OCFS-4315A](#) or [OCFS-4315A-S](#) must be used for this purpose.

If the birth parent(s) specifies that a certain individual is to adopt the child, the authorized agency may accept a [SSL §384](#) surrender instrument only if the individual is a certified or approved foster parent, or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations [[SSL §384\(2\)\(a\)](#)]. If the birth parent(s) specifies that a certain individual is to adopt the child, the authorized agency may only accept a [SSL §383-c](#) surrender if such person is a certified or approved foster parent, where the permanency plan for the child is for the child to be adopted by that person or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations [[SSL §383-c\(2\)\(a\)](#)]. If the specified individual is a certified or approved foster parent but is not an approved adoptive parent, it would still be necessary to approve such individual as an adoptive parent prior to finalizing an adoptive placement.<sup>3</sup>

<sup>3</sup> OCFS. “Revised Judicial and Extra-Judicial Surrender Forms and Voluntary Placement Agreement” ([07-OCFS-ADM-02](#))

The conditional surrender may provide for ongoing communication or contact between the child and the child's parent or parents on terms and conditions agreed to by the parties, including the person designated as the adoptive parent, if known. Such agreement may also provide for communication and contact between the child and the child's biological siblings or half-siblings. Consent must be obtained from siblings or half-siblings over the age of 14. An agreement concerning communication and contact is subject to the approval of the court, based on the standard of the best interests of the child [SSL §§383-c(2)(b) and 384(2)(b)].<sup>4</sup> Such agreement is not enforceable unless it is approved by the court.

If either party fails to meet the terms of the conditional surrender before the child is adopted, the other party may file a petition with the Family Court [SSL §§383-c(6)(c) and 384(5); FCA §1055-a]. After the adoption, post-adoption contact agreements are enforceable in accordance with Domestic Relations Law (DRL) §112-b.

## 2. Termination of parental rights (TPR)

When an LDSS has decided that adoption is in the best interests of a child, and the parents will not sign a surrender, or a surrender is not appropriate given the case circumstances, the LDSS should petition the court to terminate parental rights [SSL §384-b]. Sometimes, the court may order the LDSS to file a petition to terminate parental rights [SSL §384-b(3)(b)].

The decision whether to file a petition to terminate parental rights must be evaluated by the LDSS on a child-specific basis and be made in accordance with a child's best interests [18 NYCRR 431.9(a)]. Whenever a LDSS determines that a petition to terminate parental rights should be filed, the LDSS must also make reasonable efforts to identify, recruit, process, and approve a qualified family for the adoption of the child, if these steps have not already taken place [18 NYCRR 431.9(e)(3)].

The law specifies the grounds under which the court, acting on a petition from the LDSS, can terminate parental rights and commit the guardianship and custody of a child to the LDSS. For more information on the hearing process in Family Court and a more detailed discussion on the elements of the grounds for termination, see [Chapter 3](#) of this guide.

**Abandonment:** The parent has abandoned the child for a period of six months by demonstrating an intent to forego his/her parental rights. This would be shown by a parent's failure to visit or communicate with the child or the LDSS or VA although able to do so and not prevented or discouraged from doing so by the LDSS or the VA. The ability to visit and communicate is presumed, absent evidence to the contrary [SSL §384-b(4)(b) and (5)(a)].

**Permanent Neglect:** A child in foster care whose parent has failed for 15 out of the most recent 22 months, or at least one year, while the child was in foster care substantially and continuously or repeatedly to maintain contact with the child or to plan for the child's future although physically and financially able to do so. The parent has not taken the steps necessary for providing an adequate, stable home for the child, as outlined in the child's Service Plan. The LDSS or VA must have made diligent efforts to encourage and strengthen

<sup>4</sup> Ibid.

the family, when such efforts were not contrary to the child's best interests [SSL §384-b(7)(a)].

**Mental Illness or Intellectual Disability:** The parent, by reason of mental illness or intellectual disability, is presently and for the foreseeable future unable to provide proper and adequate care for a child who has been in foster care for the period of one year prior to the filing of the TPR petition on this ground [SSL §384-b(4)(c)]. Testimony must be provided by a psychologist or psychiatrist [SSL §§384-b(6)(c) and (e)].

**Severe or Repeated Abuse:** A parent or another person legally responsible for the child has severely or repeatedly abused the child. These terms apply if the child has been found to be an abused child because of reckless or intentional acts by the parent that resulted in serious physical injury to the child; the parent committing a felony sex offense or allowing such an offense to be committed; or the parent's conviction for murder, manslaughter or assault of another child in the home [SSL §§384-b(8)(a) and (b)]. Such a finding may also occur in an Article 10 proceeding when the Family Court finds severe or repeated abuse by clear and convincing evidence.

***a. "Best interests" determination***

In most case, the LDSS must determine whether the termination of parental rights would be in the best interests of the child. This determination must be made six months after the child is removed from the home and every six months thereafter, except where there are compelling reason or other grounds specified in statute or regulation excluding such requirement [18 NYCRR 431.9(a)]. The caseworker must document his/her observations about the status of the relationship of the child in foster care with his/her birth family in the case record.

In making the determination to terminate parental rights, the agency must consider whether there are indications of parental rejection of the child [18 NYCRR 431.9(b)], which may include the failure of the parent(s) to:

- Request visits with the child
- Cooperate with the agency in planning and arranging visits with the child, although physically and financially able to do so
- Communicate with the child regularly by phone or letter if there is physical or financial inability to visit
- Keep appointments to visit the child as arranged
- Keep the agency informed as to his/her whereabouts
- Keep appointments with agency staff that may have been arranged to assist the parent with those problems which affect the parent's ability to care for the child
- Use community resources as arranged or suggested by the agency or other involved agencies, or ordered by the court, to resolve or correct the problems which impair parental ability to care for the child

- Demonstrate a willingness and capacity to plan for the child's discharge, taking whatever steps are necessary to provide an adequate, safe, and stable home and parental care for the child within a reasonable period of time

The LDSS also must consider whether there are indications that efforts to encourage and strengthen the parental relationship would not be in the child's best interests as evidenced by parental:

- Addiction to alcohol or drugs to such a degree that the parent's ability to function in a mature and reasonable manner is impaired, or antisocial behavior to a degree that the parent is frequently incarcerated
- Consistent, expressed hostility toward the child or evidence of neglect and/or abuse during periods when the child has visited the parent
- Consistent, expressed resistance on the part of a child, who is of sufficient maturity and intelligence to make such judgment, to accept visits from the parent; or resistance on the part of a small child without sufficient maturity or judgment who exhibits resistance or defensive behavior; e.g., continual crying when parents visit, bedwetting, compulsive scratching, nervous habits, only evident when the child is with parents, but not evident in everyday behavior in the foster home
- The parent's mental illness, manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if the child were returned to the custody of the parent, the child would be in danger of becoming a neglected child
- The parent's intellectual disability, as manifested by impairment in adaptive behavior to such an extent that if the child were returned to the custody of the parent, the child would be in danger of becoming a neglected child [[18 NYCRR 431.9\(b\)\(2\)](#)]

***b. Parents who are incarcerated or in residential treatment programs***

The LDSS is not required to immediately file a TPR petition if:

1. The parent of a child is incarcerated or participating in a residential substance abuse treatment program or has been incarcerated or has been placed in a residential substance abuse program
2. Such incarceration or participation is a significant factor in why the child has been in foster care 15 of the most recent 22 months
3. The parent has maintained a meaningful role in the child's life, and
4. The agency has not documented a reason why it would otherwise be appropriate to file a TPR petition [[SSL §384-b\(3\)\(l\)\(i\)\(D\)](#)]

The decision about whether to file a TPR petition must be made on a case-by-case basis. State law specifies that the parent must have made efforts to maintain a meaningful role in the child's life. There must be evidence that the parent has taken actions such as:

- Keeping in contact with the child through letters, phone calls, visits, and other forms of communication
- Communicating with and working with the LDSS or VA, the attorney for the child, foster parents, the court, their own attorney and others providing services to the parent, such as correctional, mental health, and substance abuse treatment program personnel, for the purpose of complying with the Service Plan and repairing, maintaining or building the parent-child relationship
- Responding positively to the agency’s diligent efforts to assist, develop, and encourage a meaningful relationship between the parent and child [SSL §384-b(3)(l)(v)]

The LDSS or VA should gather input from the parent, the child, the child’s attorney, the parent’s attorney, important people in the child’s life, and service providers for the parent. If the LDSS assesses that a parent maintains a meaningful role in the child’s life, it must then determine whether the continued involvement of the parent is in the child’s best interests. An exception to filing for a TPR exists only if these conditions are met [SSL §384-b(3)(l)(v)].

See [Section B](#) of this chapter for more information about making diligent efforts to maintain connections between incarcerated parents and their children.

***c. Other reasons not to file a TPR petition***

The following case circumstances may constitute reasons not to file a TPR. These should not be considered an automatic justification not to file a TPR petition. A case by case determination is necessary. The caseworker should consult with both legal and supervisory program agency staff to determine the appropriate course of action for each, individual case. Periodic case conferences are one mechanism for such consultation.

There may be a “compelling reason” not to file a TPR petition [SSL §384-b(3)(l)(ii); 18 NYCRR 431.9(e)(2)(ii)]. Some of these reasons are:

- The child was placed into foster care as a result of being adjudicated a juvenile delinquent (JD) or Person in Need of Supervision (PINS), and a review of the specific facts and circumstances of the child’s placement demonstrate that the appropriate permanency goal for the child is either a return home or discharge to APPLA
- Adoption is not the appropriate permanency goal for the child
- The child is 14 years old or older and will not consent to adoption. Before determining that the child will not consent, it is important to provide the child with meaningful adoption counseling about the benefits of adoption and the child’s awareness of the possibility (if appropriate) for continued contact with members of the child’s birth family
- The child is the subject of a pending disposition under Article 10 of the Family Court Act, except where the child is already in foster care based on another type of legal authority such as a voluntary placement, PINS, JD, or destitute child, and a review of

the specific facts and circumstances of the child's placement demonstrates that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

- There are insufficient legal grounds for TPR. This determination must be based on a consultation with the agency's attorney

There are two additional reasons why an LDSS may decide not to file a TPR petition:

- The child is being cared for by a relative
- The family has not been provided with legally required services necessary for the safe return of the child. These services must have been documented in the service plan and must still be necessary to safely discharge the child [SSL §384-b(3)(l)(i); 18 NYCRR 431.9(e)(2)(i) and (iii)].

#### ***d. Rights of out-of-wedlock fathers***

OCFS has established a Putative Father Registry [SSL §372-c] that includes the names and addresses of:

- Any person who has been adjudicated by a court in New York State to be the father of a child born out of wedlock
- Any person who has filed with the Registry a notice of intent to claim paternity of a child
- Any person who has been adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child (a copy of the court order must be filed with the Registry)
- Any person who has filed with the Registry an instrument acknowledging paternity of a child [SSL §372-c(1)]

The father of a child born out of wedlock who is listed in the Putative Father Registry, must be given notice about any court proceedings that involve the transfer or surrender of parental rights by the mother or a TPR proceeding against the mother of the child [SSL §384-c(1)]. Notice also must be given, if possible, to a person who:

- Is recorded as the child's father on the child's birth certificate
- Has been adjudicated by a court to be the father of a child
- Is openly living with the child and the child's mother at the time the child was placed into care and held himself out to be the child's father
- Was identified as the child's father by the mother in a written, sworn statement
- Was married to the child's mother within six months after the birth of the child and before child welfare proceedings began [SSL §384-c(2)]

This notice requirement does not apply to men who have been convicted of any one of the following sexual offenses: rape in the first or second degree, course of sexual

conduct against a child in the first degree, predatory sexual assault, or predatory sexual assault against a child when the child who is the subject of the court proceeding was conceived as a result of such crime [SSL §384-c(1)].

No order of the court involving the child's custody, guardianship, or adoption can be reversed, vacated or annulled upon application by a putative father if the putative father received notice of the proceedings but failed to appear or waived his right to receive notices [SSL §384-c(7)].

***e. After termination of parental rights***

If the court decides to terminate parental rights, the court transfers guardianship and custody of the child to a LDSS or VA. The LDSS or VA must notify the prospective adoptive parents (if identified) that an adoption proceeding may be commenced, assuming that the parental rights of all persons whose consent to adoption have been resolved [SSL §384-b(10)].

The LDSS or VA must notify the current foster parents that the child in their care has been freed for adoption, again assuming that the parental rights of all persons whose consent to adoption have been resolved [18 NYCRR 421.19(a)(1)]. Prospective adoptive parents may submit a petition to adopt a child to the court in which the TPR proceeding is being heard, even before that proceeding is concluded [Domestic Relations Law §112(8)]. In most cases, the child must be placed with the prospective adoptive family for at least three months before a final order of adoption is issued with the duration of the foster care placement with the petitioner applied toward the time period [Domestic Relations Law §112(6)].

***f. Restoration of parental rights***

New York State law authorizes the Family Court, in narrowly defined circumstances, to restore a birth parent's parental rights after they have been terminated. [FCA §635]. With the consent of the respondent in the original termination of parental rights proceeding, as well as that of the child, a petition to restore parental rights may be filed, provided that:

- The child is 14 years of age or older
- At least two years have elapsed since the issuance of the order transferring guardianship and custody of the child
- The original adjudication terminating parental rights was not based upon severe or repeated child abuse
- The child is under the jurisdiction of the Family Court, has not been adopted, and has a permanency goal other than adoption [FCA §635]

The agency to which guardianship and custody has been committed must agree with the restoration of parental rights, unless the court finds that such consent was withheld without good cause [FCA §§635(c) and 637(a)]. The court is authorized to grant the petition where clear and convincing proof establishes that restoration of parental rights would be in the child's best interests [FCA §637(a)]. A restoration will, in effect, revoke the disposition transferring guardianship and custody of the child, but leave in place the

fact-finding upon which the termination of parental rights adjudication had been based [FCA §637(b)(i)].<sup>5</sup>

### 3. After a child is freed for adoption

Agencies must have a comprehensive recruitment plan that focuses on developing a pool of adoptive parents who are willing and able to adopt the children who have been freed for adoption and who are representative of the children in care. In compliance with these mandates, OCFS regulations require LDSSs and VAs to:

- Carry out recruiting efforts specifically directed at communities of populations that have ethnic, racial, religious, or cultural characteristics similar to those of the children needing adoptive placements
- Keep the community informed about the development and progress of the adoption program and the characteristics and needs of the children who are waiting for adoption
- Offer information about the program, the need for adoptive homes, and the availability of adoption subsidy, to organizations, agencies, media representatives, and other persons who may be a referral source in the community
- Seek to recruit persons with the ability and motivation to serve children in need of a permanent family [18 NYCRR 421.10].

For more information on the recruitment of adoptive parents, see [Chapter 8](#) of this guide, “Recruiting and Supporting Foster Families.”

#### **a. Who can adopt?**

An adult unmarried person, an adult married couple together, or any two unmarried, adult intimate partners together may adopt a child. An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation, or an adult married person who has been living separate and apart from his/her spouse for at least three years may adopt a child (and the adopted child will not be deemed the child or stepchild of the non-adopting partner for any purpose). An adult or minor married couple together may adopt a child of either of them born in or out of wedlock, and an adult or minor spouse may adopt a child of the other spouse [[Domestic Relations Law §110](#)].

Upon receiving an Application to Adopt form ([LDSS-0857](#)) or other OCFS-approved application from prospective adoptive parents, agencies must conduct adoption studies



#### **Resource:** *Adoption Services Guide*

Much of the information in this section is provided in more detailed form in the [OCFS Adoption Services Guide for Caseworkers](#). Please refer to this document for answers to questions related to adoption.

<sup>5</sup> OCFS. “Restoration of Parental Rights” ([11-OCFS-INF-02](#)).

[18 NYCRR 421.15]. As part of this adoption study process, LDSSs and VAs must explore the following characteristics of adoptive applicants [18 NYCRR 421.16(a)]:

- Capacity to give and receive affection
- Ability to provide for a child's physical and emotional needs
- Ability to accept intrinsic worth of a child, to respect and share his or her past, to understand the meaning of separation he or she has experienced, and to have realistic expectations and goals
- Flexibility and ability to change
- Ability to cope with problems, stress and frustrations
- Feelings around parenting an adopted child and the ability to make a commitment to a child placed in the home
- Ability to use community resources to strengthen and enrich family functioning

The home study criteria, including what factors may or may not be considered, include the applicant's age, health, marital status, fertility, family composition, gender preference with regard to child matching, employment and education, religion and race, income, employment and geographical stability, child care experience, socialization and community support, and the results of background checks through the FBI; DCJS; the SCR; other states' child abuse and maltreatment registry, if the person lived in another state within the previous five years; and the Justice Center. Current abuse of alcohol or other drugs requires the rejection of an application [18 NYCRR 421.16(b)-(r)].

### ***b. Adoption by relatives***

Caseworkers are required to make diligent efforts to contact both the maternal and paternal relatives of children who have been removed from their homes [FCA §1017(1); 18 NYCRR 430.11(c)(4)]. These efforts may result in identifying relatives who are willing and able to care for children as foster parents or, if the children are unable to return home, as adoptive parents or legal guardians (see [Section C](#) of this chapter).

If the child has been placed with relatives for foster care, the relatives have certain rights in adopting the child. If the child freed for adoption has lived in their home continuously for 12 months, their application to adopt will be given preference [SSL §§374(1-a) and 383(3)].<sup>6</sup> This preference also applies to nonrelative foster parents.

If a child has been placed with nonrelatives, seeking out and assessing relatives with regard to becoming a permanent resource for the child should be pursued as early as possible to eliminate unnecessary moves for the child [18 NYCRR 430.11(c)(4)]. Relatives are preferred as adoptive parents when a child has been living with non-related foster parents for less than a year, or when the foster parents are unwilling or unable to adopt.

<sup>6</sup> OCFS. *Having a Voice and a Choice: Handbook for Relatives Raising Children*. OCFS Publications [5080](#) and [5080-S](#) (Spanish)

### **c. Adoption by foster parents**

Many foster parents who have cared for a child in their home are interested in adopting that child when he/she becomes legally free. If this is the case, the LDSS or VA can ask the parent to sign a “Declaration of Intent to Adopt” ([OCFS-7060](#)). After this document is signed, the agency must not refer the child for photo-listing [[SSL §372-f\(4\)\(b\)](#); [18 NYCRR 420.2\(d\)\(1\)](#)].



#### **Practice Tip: Adoption from the child’s point of view**

The child’s feelings about adoption are an important consideration in planning with and for the child. Some children are ready to explore the adoption option and commit to a new family. Others may resist forming new attachments because of unresolved losses or interruptions in parenting that make it difficult for them to trust adults. While adoption may be the most appropriate PPG for a child, it is important to recognize that children develop differently, have different experiences and reactions to their experiences, and require different degrees of help and support.

Some of the important components of communicating with children of all ages about adoption include:

**Building rapport:** It is important to put the child at ease in order to communicate effectively. Demonstrating respect, empathy, honesty, and understanding is a very important tool for building rapport.

**Keeping the child/youth informed:** Be honest with children by informing them, in an age-appropriate manner, of what you do or do not know about their present situation. Children need to know the truth, regardless of how difficult it may be.

**Discussing events in age-appropriate terms:** A child’s development may not match their chronological age. Assess where the child is developmentally and make sure you share information with the child that is appropriate for their developmental age, and clarify when necessary.

**Acknowledging and normalizing the child’s feelings:** It is important to let children express their feelings and concerns. Let the child know they are not alone in their present situation and that many other children share the same experiences. Children want to be taken seriously when they finally get comfortable enough to share their feelings and thoughts.

Source: *OCFS Adoption Services Guide for Caseworkers*, p. 28

If a child who is legally free has lived with a foster parent for 12 continuous months or more, the LDSS or VA must give that foster parent’s request to adopt the child preference and first consideration [[SSL §§374\(1-a\)](#) and [383\(3\)](#)]. This means that after a child is legally free for adoption, the foster parent who has cared for the child for at least twelve months without interruption can ask the LDSS or VA for permission to adopt the child. The LDSS or the VA must take the foster parent’s request to adopt into account before it considers allowing any other family to adopt the child. This foster parent preference, however, is not a guarantee that the foster parent will be able to adopt the

child. The agency is still required to make sure that adoption by the foster parent is in the child's best interests [18 NYCRR 421.18(d)].<sup>7</sup>

#### **d. Online tools for pre-adoptive families**

Two web-based tools are available from OCFS that are designed to raise awareness about children and youth waiting for adoption and to assist in the process of matching them with adoptive families.

The Adoption Album is a photo listing of children in New York State who have been freed for adoption. It can be viewed on the OCFS website at <http://ocfs.ny.gov/adopt/photolisting.asp>. Case managers in each LDSS have the ability to list children in the Adoption Album. Each listing includes a photo, the child's age, a narrative description of the child, and who to contact for more information.

The Family Adoption Registry is a list of families that are looking to adopt photo-listed children. All prospective adoptive parent(s) who express a willingness to adopt photo-listed children must be registered in the Family Adoption Registry [18 NYCRR Part 424]. The registry will allow caseworkers to match the applicant's profile and preferred child characteristics with children referred for photo listing.<sup>8</sup> The registry and the related Family Photo Listing are available to caseworkers on the OCFS Intranet.



#### **Resources: Publications for pre-adoptive parents**

##### **Adopting a Child from Foster Care in New York State (OCFS Pub 1128)**

English: <http://ocfs.ny.gov/main/publications/PUB-1128.pdf>  
 Spanish: <http://ocfs.ny.gov/main/publications/SP/PUB-1128-S.pdf>

##### **New York State Foster Parents' Guide to Adoption (OCFS Pub 5033)**

English: <http://ocfs.ny.gov/main/publications/Pub5033.pdf>  
 Spanish: <http://ocfs.ny.gov/main/publications/Pub5033-S.pdf>

##### **New York City Foster Parents' Guide to Adoption (OCFS Pub 5022)**

English: <http://ocfs.ny.gov/main/publications/Pub5022.pdf>  
 Spanish: <http://ocfs.ny.gov/main/publications/Pub5022-S.pdf>  
 Chinese: <http://ocfs.ny.gov/main/publications/Pub5022-CH.pdf>  
 Russian: <http://ocfs.ny.gov/main/publications/Pub5022-RU.pdf>  
 Arabic: <http://ocfs.ny.gov/main/publications/Pub5022-AR.pdf>

<sup>7</sup> OCFS. (2007). *New York State Foster Parents' Guide to Adoption*. OCFS Publications [5033](#) and [5033-S](#) (Spanish)

<sup>8</sup> OCFS. "The Adoption Album: Our Children, Our Families" ([99-OCFS-ADM-01](#)).

## E. Other permanency options

### 1. Referral for guardianship

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 often permanent family. Parental rights may or may not be terminated for a youth to have this PPG. Guardians, who may be relatives or nonrelatives, 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 [[FCA §§1055-b\(e\) and 1089-a\(e\)](#), [FCA §661](#)].

Kinship Guardianship Assistance Payments (KinGAP) may be available for kinship (and some non-kinship) foster parents who choose to become legal guardians [[SSL §§458-a to 458-f](#)]. KinGAP may also be available to a successor guardian named by the relative guardian either in the original KinGAP agreement or an amendment, if the original KinGAP relative guardian receiving KinGAP payments dies or is incapacitated [[SSL §458-b\(5\)\(b\)](#)]. For more information, see [Chapter 5](#) of this guide, "Kinship Foster Care."

### 2. Placement with a fit and willing relative

In New York State, discharge to a fit and willing relative involves a relative being awarded legal custody or guardianship of a child. While the custody of the child is transferred to the relative, the birth parents retain their parental rights and the LDSS or VA no longer has supervision of the case. Relatives would file a petition for legal custody or guardianship in Family Court under Article 6 of the state Family Court Act. See [Chapter 5](#) of this guide, "Kinship Foster Care."

After a child has been placed in foster care, making a permanency plan for a child with fit and willing kin who will provide a safe and permanent home for the child continues to be a preferred alternative approach if a child cannot return home.

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 should 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.

Before the foster child is placed with relatives, the possibility of making the placement a permanent arrangement should be explored. If a child is placed with nonrelatives, seeking out and assessing relatives with regard to becoming a permanent resource for the child should also be pursued as early as possible to eliminate unnecessary moves for the child [[FCA §1017\(1\)](#); [18 NYCRR 430.11\(c\)\(4\)](#)].



**Practice Tip:**  
*Using social media to search for family members*

Efforts to locate family members of foster children may include utilizing 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 and with the policies and practices of your agency.

No communication on social media sites should be considered private or confidential. Comments made on someone's Facebook page may be visible to their entire network of friends – or yours – depending on privacy settings. Even with high privacy settings, communications can be forwarded to others and shared in other ways. Remember that the child's safety is the number one priority.

**Do not** identify the child or provide any case-specific information through social media, including, but not limited to, the circumstances surrounding the child's placement into foster care. You **may** provide your own contact information to the identified family member via a private message (PM) and ask the family member to contact you 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.

If the family member contacts you, speak to the family member to ascertain his/her identity and to determine whether the person is, in fact, a family member. At this time, you may identify the child/youth who is in foster care, but **do not** reveal specific circumstances of the placement.

If, during the initial conversation, the family member says he/she is not interested or able to be involved in the case, the relative notification letter does **not** need to be sent.

If the family member is interested in being considered as a resource, ask for his/her contact information and mail the relative notification letter. Schedule a phone conference and/or face-to-face meeting to discuss information regarding the child.

If the family member does not respond to the PM, you are not required to send out subsequent messages to the family member through social media.

Adapted from "Planning for a Successful Adulthood" ([15-OCFS-ADM-19](#)), p. 7

### 3. Discharge to APPLA

Another planned living arrangement with a permanency resource (APPLA) is a permanency planning goal designed to assist foster care youth in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services.

The following requirements pertain to all children in a foster care placement whose permanency goal is discharge to APPLA. This PPG may be established when a child is 16 years of age or older whose previous PPG was return to parents or adoption, and it is determined to be in the child's best interests that he/she remain in foster care and not return

to his/her parents or be adopted until before he/she reaches the age of 18 [18 NYCRR 430.12(f)(1)(i)].

When this PPG is selected, the first FASP must indicate the reasons for choosing this goal rather than “discharge to parents or relatives” or “discharge to adoption,” and must summarize efforts to accomplish either or both of these permanency goals before this goal was selected and document a compelling reason why it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative [18 NYCRR 430.12(f)(1)(ii)].

The worker must document in the case progress notes and in each permanency hearing report (PHR):

- The efforts that have been made in selecting the 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>1</sup>
- The compelling 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
- The steps taken to determine 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 [FCA §§355.5(7)(d), 756-a(d)(iv) and 1089(c)(v); 18 NYCRR 428.5(c)(13)]

See [Chapter 13](#) of this guide, “Discharge from Foster Care,” for details on preparing youth for discharge when they have a PPG of APPLA.

#### **4. Discharge to adult residential care**

Discharge to adult residential care may only be the permanency planning goal for children for whom the necessity of placement is based in whole or in part on a “child service need” arising out of a factor other than the child’s behavior [18 NYCRR 430.12(g)(1)(i)]. These child service needs are [18 NYCRR 430.10(c)(5)(i)(a) and (d)]:

- The child has a diagnosed or diagnosable physical, mental, or emotional condition which severely impairs the child's ability to carry out daily, age-appropriate activities and which presents treatment needs that prevent the parent from being able to maintain the child in the home

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<sup>1</sup> Where parental rights have been terminated or surrendered, it is OCFS’s interpretation of federal and state requirements that the LDSS or VA has satisfied this requirement in regard to such parent.

- The child is eligible for admission to a facility operated or supervised by the New York State Office of Mental Health (OMH) or the New York State Office for People With Developmental Disabilities (OPWDD)

For each child with this goal, the LDSS must consider alternative permanency goals, including "discharge to parents or relatives" and "discharge to adoption" before this goal is chosen, and the LDSS Director of Social Services must review and approve the establishment of this goal. The worker must document the specific reasons why this is the most appropriate permanency goal for this child and the reasons why the child should not be discharged to parents or relatives or to an adoptive placement [[18 NYCRR 430.12\(g\)\(1\)](#)].

To the extent permitted by the Mental Hygiene Law and the regulations of the OMH or the OPWDD, the LDSS must obtain copies of the case records and service plans and any updates to such records and plans for children who are receiving care in facilities operated or supervised by such offices. Such records, plans, and updates must be made a part of the case record [[18 NYCRR 430.12\(b\)](#)].

## F. Involvement of children and youth in case planning

Children and youth in foster care who are developmentally able must be involved in planning their futures. Several requirements in federal and state law support this principle.

### 1. Participation in Service Plan Reviews

Children in foster care who are at least 10 years old but less than 14 years old must be allowed to participate in Service Plan Reviews, unless there is a documented reason related to the current necessity of placement why the child should not be involved [430.12(c)(i)(a)(1)]. This age group also receives a copy of the Permanency Hearing Report and may attend permanency hearings in Family Court [FCA §1089(b)(1-a)]. See [Chapter 3](#) of this guide, “Proceedings in Family Court.”

### 2. Youth appointments to case planning team

When a youth reaches the age of 14 years, he/she must be involved in case planning [SSL §409-e(2); 18 NYCRR 428.3(i), 428.9(b)(1)(iv) and 430.12(c)(2)(i)(a)(2)]. He/she also may choose up to two people who will participate on his/her case planning team. These individuals cannot be the youth’s foster parent(s), case manager, case planner, or caseworker. The LDSS or VA with case management responsibility may reject an individual selected by the youth if the agency has good cause to believe that the individual would not act in the child’s best interests. One individual selected by the youth may be designated to be the child’s advisor and, as necessary, advocate with respect to the application of the reasonable and prudent parent standard by the foster parents [18 NYCRR 428.3(i)].

Before the youth considers whether to exercise the option to select up to two individuals to his or her case planning team, LDSSs and VAs should first assist the youth in identifying the supportive people in his or her life. Tools such as genograms, life books, and the [Youth Connections Scale](#) can be used to assist LDSSs, VAs, and the youth in this process.

Supportive people may include, among many others, older siblings, teachers, employers, coaches and family friends. Some youth may not be able to or want to identify individuals to be part of their case planning team. Throughout the entire process, the youth should be informed that it is the youth’s option to invite these individuals; however, the youth is not required to do so. The youth must have the opportunity to identify these individuals for the development of each FASP and amendments made to the FASP, as well as for each Service Plan Review and case consultation. The youth may choose different individual(s) each time; however, the LDSS and VA should encourage the youth to invite the same individual(s) in order to provide consistency.<sup>1</sup>

The youth’s birth parents must be informed about the individuals chosen by the youth to participate in case planning (unless parental rights have been terminated or surrendered). LDSSs and VAs may choose to use confidentiality agreements that are signed by all team participants at the beginning of case planning meetings. At minimum, the confidentiality

<sup>1</sup> OCFS. “Case Planning for Youth in Foster Care 14 Years of Age or Older” ([15-OCFS ADM-22](#))

agreement must state that the case record information discussed at the case planning meeting must not be shared with anyone other than the case planning team, unless otherwise expressly agreed upon by the members of the case planning team.<sup>2</sup>



**Practice Tip:**

*Evaluating individuals selected by youth for case planning*

Youth may choose individuals to participate on their care planning teams who are not acceptable to an LDSS or VA. The LDSS or VA with case management responsibility is allowed to reject such individuals **only** if the agency has good cause to believe that they would not act in the youth's best interests. They cannot be rejected solely on the basis of age.

The case manager must decide whether an individual will act in the youth's best interests and to make the final determination as to whether this person should be part of the case planning team. In making this determination, look at the person's relationship with the youth and consider any potential safety or other issues that could arise that would not be in the best interests of the youth in care.

Some questions to consider:

- Does the person have a recent history of unsafe or disruptive behavior at the agency or in the community?
- Is the relationship between the youth and the individual controlling, unhealthy, or inappropriate?
- Is there a history of abuse or neglect by the individual involving the youth or the youth's siblings that has been disclosed?
- Does the person understand the confidential nature of serving on the case planning team?
- Does the individual have a history of releasing otherwise confidential information regarding the youth, the youth's family or other children in foster care?

When considering whether an individual may not act in the best interests of the youth for the purposes of being a member of the case planning team, the LDSS and VA may not request an SCR screening or criminal background check.

If a decision is made to reject a person selected by the youth, the case manager must document the reason(s) it was determined that the individual would not act in the best interests of the youth. The case manager should also explain to the youth why the person was rejected and assist the youth with identifying appropriate individuals to take part in the next case planning meeting.

Source: "Case Planning for Youth in Foster Care 14 Years of Age or Older" ([15-OCFS ADM-22](#))

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<sup>2</sup> Ibid.

## Chapter 7: Foster Family Boarding Homes

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## Chapter 7

# Foster Family Boarding Homes

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The majority of children placed in foster care in New York State reside in foster family boarding homes, including relative/kinship foster homes.

A foster family boarding home is a residence owned, leased, or otherwise under the control of a single person or family who has been certified or approved by a Local Social Services District (LDSS) or voluntary agency (VA), with certain exceptions, to care for not more than six children, including all non-foster children in the home under the age of 13. An additional two children may be cared for if they are siblings, or are siblings of a child living in the home, are children freed for adoption and placed for adoption with the foster parent(s) in the home, or are returning to foster care [[18 NYCRR 443.1\(j\)](#)].

Foster family boarding homes are “certified” (the term used for non-relative homes) or “approved” (the term used for relatives within the second or third degree of the parent or stepparent of the foster child) by a LDSS or a VA.

## A. Types of foster family boarding homes (foster homes)

Foster family boarding homes fall into two categories:

- A certified foster home is a home in which foster care is provided to a child placed with an LDSS or VA who is cared for 24 hours a day in a family home with a foster parent(s) who has met the requirements for certification based on regulations to receive a “certificate to board” [18 NYCRR 443.1(b)].
- An approved home is a home in which temporary or long-term care is provided to a child whose care and custody or guardianship and custody have been transferred to an LDSS or VA, and who is cared for 24 hours a day in a family home with a foster parent who is a relative within the second or third degree to the parent(s) or step-parent(s) of the child, and who is duly approved by an LDSS or VA [18 NYCRR 443.1(f)]. “Care and custody” means that the parents of the child in foster care retain their parental rights [SSL §384-a]. “Guardianship and custody” means that the parental rights of the parents have been terminated [SSL §384-b].

A potential foster home or the home of a relative of a child in care may be approved or certified on an emergency basis. A relative within the second or third degree of the parent or step-parent of the child in care may be approved on an emergency basis for up to 90 days. Similarly, a more distant relative or a non-relative with a significant prior relationship with the child in care’s family may be certified on an emergency basis. The 90-day period can be extended under certain circumstances (if waiting for clearance results) [18 NYCRR 443.7(h)].

### 1. Certified foster homes

**Foster boarding homes:** The majority of certified foster homes, often referred to simply as “foster homes.”

**Therapeutic foster boarding homes:** Therapeutic foster boarding homes (TFBHs) are a type of certified foster home. Foster parents in TFBH’s care for children who would otherwise need to be served in group foster care. LDSSs and agencies select and define their own populations for these programs based on local need.<sup>1</sup> Examples of the types of children who are served include:

- Severely developmentally disabled infants and/or children
- Adolescents with a documented history of troublesome behavior and/or adjudication as PINS or Juvenile Delinquents
- Severely emotionally disturbed children
- Children with histories of group care placement or who are at risk of group care placement
- Children with at least one failed foster boarding home placement
- Severely and/or multiply physically handicapped children.

<sup>1</sup> OCFS. [Standards of Payment for Foster Care of Children Program Manual](#), Chapter 7, Section B-1.

Children cared for in these programs should meet the criteria for special or exceptional foster care services (see [Section F](#) of this chapter). TFBH programs feature lower caseloads for case workers, educational specialists to work with the local school systems, child care workers in the home, and extensive and specialized training for foster families and staff.<sup>2</sup>

**Designated emergency foster boarding homes:** Emergency foster boarding homes (EFBs) are fully certified foster homes exclusively designated to provide temporary care to children who enter foster care in a crisis situation that is expected to be resolved within 60 days [18 NYCRR 446.2]. These homes also may be approved for respite care and services. Foster parents providing this type of care must complete 15 hours of specialized training and a minimum of 6 hours of follow-up training each year [18 NYCRR 446.5].

Unless an exception is granted for good cause, emergency foster boarding homes must be available to accept children 24 hours a day, 365 days a year. Children eligible for this care must be at immediate risk of harm or present an immediate risk of harm to others or him/herself if not immediately placed into foster care. EFB homes receive higher board and care rates [18 NYCRR 446.6].

## 2. Approved (relative) foster homes

Relatives who may be approved as foster parents for a child must be related to the parent(s) or step-parent(s) of the child through blood or marriage either in the first, second, or third degree. This includes:

- Grandparents of the child
- Great-grandparents of the child
- Aunts and uncles of the child, including spouses of the aunts or uncles
- Siblings of the child
- Great-aunts and great-uncles of the child, including the spouses of the great-aunts or great-uncles
- First cousins of the child
- Great-great grandparents of the child
- Unrelated persons, where placement with such person allows half-siblings to remain together in an approved foster home, and the parents or step-parents of one of the half-siblings is related to such person in the second or third degree

Relatives within the second or third degree to the parent(s) or step-parent(s) require approval to be foster parents but need not be certified [18 NYCRR 443.1(i)]. For more details on kinship foster care, see [Chapter 5](#) of this practice guide, “Kinship Foster Care.”

<sup>2</sup> OCFS. “Foster and Adoptive Home Certification/Approval Q & As” ([https://ocfs.ny.gov/main/cfsr/Foster\\_Home\\_Cert\\_Appr\\_QAs.pdf](https://ocfs.ny.gov/main/cfsr/Foster_Home_Cert_Appr_QAs.pdf))

## B. Who can be a foster parent?

State regulations require that the home study and evaluation of the members of the applicant's household must determine compliance with the following criteria [[18 NYCRR 443.2\(c\)](#)]:

**Age:** Each foster parent must be over the age of 21.

**Health:** Each member of the household of the foster family must be in good physical and mental health and free from communicable diseases. However, a physical disability or illness of a foster parents or member of the household must be considered only as it affects the ability to provide adequate care to children in foster care or may affect an individual child's adjustment to the foster family.

**Employment:** A foster parent may work outside the home when there are suitable plans for the care and supervision of the child at all times, including after school and during the summer.

**Marital Status:** The marital status of an applicant may be a factor only as it affects the ability to provide adequate care to children in foster care.

**Character:** Each applicant for certification or approval must be required to provide the agency with the names of three persons who may be contacted for references.

**Ability and motivation.** The agency must explore each applicant's understanding of the role of a foster parent and the applicant's ability, motivation, and psychological readiness to be a foster parent in accordance with guidelines issued by OCFS.

Detailed information about the procedure for certifying/approving foster homes is available in OCFS Policy Directive [18-OCFS-ADM-07](#).



### **Practice Tip:** *Entering an inquiry in CONNECTIONS*

After responding to an applicant's inquiry, the LDSS or VA must:

- Open the "Foster and Adoption Development (FAD) home" in "Inquiry Status"
- Review the CONNX history to determine if the applicant previously had received foster home certification or approval
- Record corresponding dates in the FAD "Checklist"

See OCFS Policy Directive "Use of the Foster and Adoptive Home Development (FAD) Stage in CONNECTIONS" ([17-OCFS-ADM-05](#))

## C. Certification/approval process

### 1. Inquiry

As part of their recruitment efforts, LDSSs and VAs regularly receive inquiries from people interested in learning more about becoming foster parents. These inquiries can be received in a number of ways, most typically through phone calls, emails, and information entered



#### **Practice Tip:** *The steps to certification/approval*

The process for interested people to become certified or approved foster parents generally follows these steps. See [OCFS Publication 5183i](#) for a description of each step, the timeline for the process, and the appropriate forms to use. More detailed information on each step is provided in this chapter.

#### **Inquiry**

The LDSS or VA responds within ten days of receiving an inquiry from a prospective foster parent opens an “Inquiry” status record in the Foster and Adoptive Home Development (FAD) section in CONNX. The inquiry stage includes an initial interview or orientation, self-assessment by the prospective foster parents and their families, completion of the application forms, and the submission by the LDSS or VA of an inquiry for review of the SCR/SEL databases and requests for criminal history record checks.

#### **Acceptance of application**

After reviewing all of the application information, the LDSS or VA decides whether to accept the applicant for home study. If accepted, the home is progressed to “Applicant” status in CONNX.

#### **Training**

All prospective foster parents must complete OCFS-approved training shortly after their applications for certification or approval are received by the agency.

#### **Home study**

The home study is completed concurrently with the training program and allows the LDSS or VA to evaluate the applicant’s ability to provide a safe, nurturing home that promotes children’s health and well-being.

#### **Final assessment and determination**

At the completion of the applicant’s home study, the LDSS or VA determines whether or not to approve the application.

#### **Identification of resource characteristics**

After the application has been approved, the foster parents, in collaboration with LDSS or VA staff, complete the *Resource Characteristics Form* ([OCFS-5183i](#)), which identifies the child characteristics that the family is willing and able to accommodate.

#### **Agreement with foster family**

The foster parent signs the Foster Parent Agreement with the LDSS or VA and receives a certificate or letter of approval.

into website-based inquiry forms. State regulations specify the steps that must be taken in response to an inquiry [[18 NYCRR 443.2\(b\)](#)]:

- The agency must respond in writing within 10 days of the inquiry and have a written procedure for responding to inquiries within 10 days.
- The agency must offer an appointment for an interview or arrange for them to attend an orientation meeting about foster parenting.
- The agency must provide an application and medical report forms during the initial interview or orientation session.
- The agency must inform potential foster parents about the application process, including the requirement that the applicant and each person over the age of 18 living in the home must provide fingerprints for criminal history background checks to be conducted by the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI).

The LDSS or VA must inform those inquiring that the agency will determine whether the applicant and any persons in the home over the age of 18:

- Have been the subject of an indicated child abuse or maltreatment report on file with the SCR
- Have resided in another state during the five years prior to the application or certification or approval and if so, the LDSS or VA will request information about relevant child abuse and maltreatment from the appropriate agency in the other state(s), or
- Are listed on the register of substantiated category-one cases of abuse or neglect maintained by the Justice Center for the Protection of People with Special Needs (Justice Center)

#### **a. Self-assessment**

The *Self-Assessment Form* ([OCFS-5183A](#)) is designed to assist applicants and their families, if applicable, in considering why they want to become foster parents. The questions on the form should stimulate conversation about the various aspects of the process and provide an opportunity for the family to assess the impact on their lives of becoming foster parents.

The applicants and any children in the home (dependent on their ages and developmental appropriateness) should complete the form together as a family. The caseworker and the family should discuss and identify together the family's readiness for certification/approval as a foster family home, and what can be done to help support the family.

There are three levels of family readiness:

- *Early Stages:* Family members have some understanding about providing foster/adoptive care but need more information and discussion about the impact on their family.

- *Minimal Supports Needed:* The family needs support and/or more information from the LDSS or VA on the experience of fostering and/or adopting a child and the possible impact on their family. The family is willing and able to learn.
- *Acceptable:* The family is prepared and knowledgeable about the experience of fostering and/or adopting a child, and the impact on their family.

The Self-Assessment Form should be completed at least once after applicants have attended the initial interview or orientation. It is recommended that it also be completed as needed throughout the certification/approval process.<sup>1</sup>

### ***b. Application for certification or approval***

The *Foster-Adoptive Parent Application* ([OCFS-5183B](#)) is a uniform application that is used by all LDSSs and VAs throughout New York State. The LDSS or VA must acknowledge the receipt of the application for certification or approval within 10 days of receiving the application [[18 NYCRR 443.2\(b\)](#)].

The application includes a section requiring the applicants to submit a sworn statement indicating whether, to the best of the applicant's knowledge, the applicant or any other person over the age of 18 currently residing in the home has ever been convicted of a crime in New York State or in any other jurisdiction [[18 NYCRR 443.2\(b\)\(13\)\(iv\)](#)].

As part of the application process, the LDSS or VA must collect information on the applicant's health, physical functioning, and physical facilities of the prospective foster home. The following forms must be used:

- The *Foster-Adoptive Applicant Medical Report* ([OCFS-5183D](#)) is an attestation on the health of the family, including a complete physical examination of the applicant that is filled out by a physician, physician's assistant, nurse practitioner, or other licensed and qualified health care practitioner [[18 NYCRR 443.2\(c\)\(1\)\(ii\)](#)]. One medical report must be completed for each applicant.
- The *Safety Review Form* ([OCFS-5183E](#)) is completed by the LDSS or VA during an inspection of the applicant's physical residence. This form must also be completed if there is a significant structural or physical change to the home and/or the applicant moves.

The LDSS or VA also will verify the applicant's employment references as listed on the applicant's application.

## **2. Database checks**

All applicants must complete the forms necessary to determine whether they or any person 18 years of age or older who lives in the house is the subject of an indicated child abuse maltreatment report on file with the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) and the Justice Center for the Protection of People with Special Needs (Justice Center) Staff Exclusion List (SEL). In addition, if the applicant or any other person

<sup>1</sup> OCFS. "Foster/Adoptive Home Certification or Approval Process" ([18-OCFS-ADM-07](#))

18 years of age or older who lives in the home of the applicant lived in another state in the five years preceding the application, to obtain such information maintained by the state's child abuse and maltreatment register in each state of previous residency [[18 NYCRR 443.2\(b\)\(6\)](#)].

The LDSS or VA must inquire of the SCR and the Justice Center whether an applicant, and any person 18 years of age or older who resides in the home of the applicant, is the subject of an indicated child abuse or maltreatment report on file with the SCR and/or is on the Staff Exclusion List (SEL) maintained by the Justice Center. If the applicant or other person 18 years of age or older residing in the home of the applicant lived in another state during the five years preceding the application for certification or approval, the LDSS or VA must



### **Practice Tip: Evaluating SCR records**

The following factors should be considered by the LDSS or VA when determining if the person who is a confirmed subject in an indicated child abuse or maltreatment report is suitable to be a certified or approved foster parent(s) or other person residing in such home.

- The seriousness of the incident(s) involved in the indicated report
- The seriousness and extent of any injury sustained by the child(ren) named in the indicated report
- Any detrimental or harmful effect on the child(ren) as a result of the subject's actions or inactions, and the relevant events and circumstances surrounding the actions and inactions as these relate to the indicated report(s)
- The age of the subject and the child(ren) at the time of the incident(s) of child abuse or maltreatment
- The time elapsed since the most recent incident of child abuse or maltreatment
- The number and/or frequency of indicated incident(s) of abuse or maltreatment
- Any information produced by the applicant, or produced on his/her behalf, regarding his/her rehabilitation, such as:
  - The acts of child abuse and maltreatment apparently have not been repeated.
  - Evidence of actions taken by the person, which show that he/she is now able to deal positively with a situation or problem that gave rise to the previous incident(s) of child abuse and maltreatment
  - Professional treatment (e.g., counseling or self-help groups) has been successful.
  - The applicant has been successfully employed in the child care field.

Each report must be carefully reviewed. Extra weight and scrutiny must be given to report(s) where the abuse or maltreatment resulted in a fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive.

Source: "Requesting Records from the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) for the Certification or Approval of Foster Boarding Homes" ([18-OCFS-ADM-08](#)).

request child abuse and maltreatment information from the applicable child welfare agency of each such state of previous residence.<sup>2</sup>

**a. Requesting SCR records**

When the SCR notifies the LDSS or VA that an applicant or person 18 years of age or older residing in the home is a confirmed subject in an indicated report of child abuse or maltreatment, this does not automatically exclude the individual from being a foster parent or residing in a certified or approved foster boarding home. The LDSS or VA *must*, however, have the individual request the relevant records from the SCR and review them to make an informed decision about whether to certify or approve a foster boarding home. This request is made using the *Authorization for Release of Information Form* ([OCFS-5023](#)) [[18 NYCRR 443.2\(b\)\(6\)](#)].

Reviewing such records will allow the authorized agency to make an informed decision regarding certification or approval of the prospective foster boarding home. This informed decision promotes the health, safety, and stability of children in foster care.

For detailed information on obtaining and reviewing SCR records, see the OCFS Policy Directive “Requesting Records from the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) for the Certification or Approval of Foster Boarding Homes” ([18-OCFS-ADM-08](#)).

**b. SCR notification and hearing process**

If the database check reveals that the applicant is a confirmed subject in an indicated report or reports, but those reports have not been upheld at administrative appeal at the preponderance standard, the SCR is required to notify the applicant in writing. The letter (commonly referred to as a “Valmonte letter”) informs the applicant that she/he is a subject in an indicated child abuse or maltreatment report(s) and that such information will be shared with the inquiring agency unless he/she takes advantage of the statutory right to appeal the indicated finding [[SSL §424-a\(1\)\(e\)](#)].

The applicant has 90 days from the date he/she received the letter to request an appeal. If the subject does not respond within this period, the subject has waived his/her right to appeal and the SCR notifies the agency in writing that the applicant is the confirmed subject of one or more indicated reports. If the subject does respond and request administrative appeal within the 90 days, the SCR initiates the administrative appeal process.<sup>3</sup>

When a LDSS or VA is notified that either the applicant or another adult household member is a confirmed subject of an indicated report of abuse or maltreatment, the LDSS or VA must conduct and document an assessment whether to approve or deny the application using guidelines developed by OCFS [[18 NYCRR 443.2\(b\)\(8\)](#)]. If the determination is made to approve the application, the LDSS or VA must document the

<sup>2</sup> OCFS. “Requesting Records from the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) for the Certification or Approval of Foster Boarding Homes ([18-OCFS-ADM-08](#))”

<sup>3</sup> OCFS Child Protective Services Manual, [Chapter 3](#), Page C-2.

reasons why the applicant was determined to be appropriate and acceptable [18 NYCRR 443.2(b)(9) and (f)(14)].

### 3. Criminal history record check

The LDSS or VA must obtain criminal history record checks from the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) regarding any prospective foster parent and each person 18 years of age or older who is currently residing in the home of such prospective foster parent [18 NYCRR 443.2(b)(4) and 443.8(a)].

#### *a. Fingerprinting*

As part of the criminal history record check, the LDSS or VA must notify the prospective foster parents and each person over the age of 18 who is currently living in the home that their fingerprints must be taken [SSL §378-a]. Fingerprints are obtained by digital scanning at a vendor approved by the state (see [Guidelines for Fingerprinting](#), OCFS-4930-1).

A “Request for Fingerprinting Services” form [OCFS-4930ASFA](#) must be provided to foster/adoptive parent applicants and to any household members over the age of 18. They must make an appointment for fingerprinting with the vendor. Instructions are provided on the form, which is also available in Spanish. It is recommended that copies of these forms be provided at the time an application is submitted.

As part of the process of checking criminal history records, DCJS and the FBI conduct searches of their databases. The fingerprints are kept on file at DCJS on a search and retain status, and the certifying/approving LDSS or VA is notified if an arrest or conviction is reported in the future to DCJS. The fingerprints are not maintained by the FBI on a search and retain basis.

#### *b. Criminal history record findings*

OCFS receives and reviews the criminal history record information from both the FBI and DCJS regarding individuals who have applied for certification or approval as foster/adoptive parents as well as persons over the age of 18 living in the home. OCFS forwards a summary of the DCJS and FBI reports to the LDSS when the application was made through the LDSS.

When the application has been made through a VA, OCFS forwards a summary of DCJS information, but not the results of the FBI criminal history check. Based on a directive from the FBI, VAs, because they are not public agencies, no longer receive from OCFS a criminal history record summary containing the content of the results of the FBI criminal history record check. Instead, OCFS will send VAs a written notification for each fingerprinted person.

The written notification includes the conclusion reached by OCFS after a review of the FBI criminal history record in one of the three categories listed below. The conclusion may be that the VA must deny the application, must hold the application in abeyance pending further direction from OCFS, or that OCFS has no objection, solely based on

the FBI criminal history record check, for the VA to proceed with a determination on the application based on the standards for the certification or approval of a foster parent as set forth in OCFS regulations.<sup>4</sup>

All criminal history information must be reviewed as it relates to these regulatory requirements:

1. An application **must be denied** when a criminal history record reveals [18 NYCRR 443.8(e)(1)]:
  - A felony conviction at any time involving:
    - Child abuse or neglect
    - Spousal abuse
    - A crime against a child, including child pornography
    - A crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery
  - A felony conviction within the past five years for physical assault, battery, or a drug-related offense
2. The application must be **held in abeyance** whenever the criminal history record of the prospective or existing foster parent reveals [18 NYCRR 443.8(e)(2)]:
  - A charge for a category of crime listed above which has not been finally resolved, or
  - A felony conviction that may be for a category of crime listed above, usually dependent on who was the victim of the crime

When an application is held in abeyance, the LDSS or VA may proceed with a determination of such application only upon receiving subsequent notification from OCFS regarding the status of such charge or the nature of such conviction.

3. An application **may be denied** (known as a discretionary crime) when [18 NYCRR 443.8(e)(3)]:
  - A criminal history record of the prospective or existing foster parent reveals a charge or a conviction of a crime other than those listed above
  - A criminal history record of any other person over the age of 18 who resides in the home of the prospective or existing foster parent reveals a charge or a conviction of any crime

The decision to deny an application based on a discretionary crime must be made in a manner consistent with the standards set forth in Article 23-A of the Correction Law, which are contained in OCFS policy directive [16-OCFS-ADM-20](#).

<sup>4</sup> OCFS. "Fingerprinting and Criminal History Record Checks for Foster and Adoptive Parents" ([16-OCFS-ADM-20](#))

When a criminal history record of a current foster parent or any other person over the age of 18 who lives in the home reveals a charge or conviction of any crime, the LDSS or VA must perform and document a safety assessment of the conditions in the home. State law and regulation requires the safety assessment to include [18 NYCRR 443.8(g)(1)]:

- Whether the subject of the charge or conviction lives in the household
- The extent to which the individual may have contact with the child in foster care or other children living in the household
- Status, date, and nature of the criminal charge or conviction

OCFS has provided [guidelines](#) for making a safety assessment when a criminal history record check results in a finding that there has been a charge and/or conviction for a crime involving the applicant(s) or a person over the age of 18 currently residing in the home of the applicant(s).<sup>5</sup>

The LDSS or VA must take all appropriate steps to protect the health and safety of the child or children, including removal from the home or denial of the application. The LDSS or VA must document the safety assessment and the steps and actions taken to protect the health and safety of the child [18 NYCRR 443.8(g)].

### ***c. Required notification and hearing process***

If the applicant is disqualified for a felony conviction of spousal abuse, the applicant may apply for an OCFS administrative hearing for relief from the disqualification, based on the grounds that the offense was not spousal abuse as that term is defined below:

Spousal abuse is an offense defined in Section 120.05 or 120.10 of the Penal Law where the victim of such offense was the defendant's spouse. For the purpose of criminal history record checks performed under SSL §378-a(2) and 18 NYCRR 443.8, spousal abuse does not include a crime in which the prospective or existing foster parent was a defendant in the case, but who also was found by an administrative hearing held by OCFS to have been the victim of physical, sexual or psychological abuse by his/her spouse, and when such abuse was a factor in causing the prospective or existing foster parent to commit the offense [18 NYCRR 443.8(h)(3)(i)].

### ***d. Confidentiality***

Any criminal history record information provided by DCJS or the FBI, and any summary of the criminal history record provided by OCFS to a LDSS or VA is confidential and is not available for public inspection. The information may be disclosed, however, to any administrative or judicial proceeding relating to the denial of a foster parent's certification or approval. Where there is a pending court case, the LDSS or VA that received the criminal history record summary from OCFS must provide a copy of such summary to the Family Court or Surrogate's Court [18 NYCRR 443.8(h)].

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<sup>5</sup> Ibid.

## 4. Acceptance of application

After reviewing all of the application information, the LDSS or VA decides whether to accept the applicant for a home study. If accepted, the home is progressed to “Applicant” status in CONNX. During this stage, prospective foster parents participate in a training program and the LDSS or VA conducts a home study.

### *a. Training*

State regulations require prospective foster parents to participate in a training program approved by OCFS. One such OCFS-approved training program is Model Approach to Partnerships in Parenting/Group Preparation and Selection of Foster and/or Adoptive Families II (MAPP/GPSII) pre-certification training program.

The orientation and training must include the following information [[18 NYCRR 443.2\(d\)](#)]:

- The social, family, and personal problems that lead to family breakdown and the need for the placement of children
- The problems and reactions of children upon separation, and the function and responsibility of the foster family in relation to the child, the parents, and the LDSS or VA staff
- The LDSS or VA policy and practice to have defined goals to achieve permanency for each child entering the foster care system
- The authority of the LDSS, the Office of Children and Family Services, and the Family Court to supervise the LDSS’s or VAs’ practice
- The nature of the relationship of LDSS or VA staff to foster parents and children, including definitions of the function and responsibility of the caseworkers assigned to the children and their families
- The payments to foster parents for care and expenses; the definition of foster family care; and certification or approval of the home
- The rights and responsibilities of a foster parent as defined by a letter of understanding that must be executed at the time of certification or approval
- Information on the reasonable and prudent parenting standard (see [Section D](#) of this chapter) [[18 NYCRR 443.2\(e\)\(1\)](#)]

### *b. Home study*

The home study allows the LDSS or VA to evaluate the applicant’s ability to provide a safe, nurturing home that promotes children’s health and well-being. The home study must be completed within four months of acceptance of an application. Delays may occur due to circumstances beyond the control of the LDSS or VA or the schedule for interviews with the applicant is changed by mutual consent of the applicant and the agency representative [[18 NYCRR 443.2\(c\)](#)].

The home study is completed concurrently with the OCFS-approved training program. It includes these components:

- The *Household Composition and Relationships Form* ([OCFS-5183F](#)), completed by the caseworker in cooperation with the applicant(s) and includes five sections:
- Partner Relationship
- Family
- Parenting
- Child Interview
- Psychosocial Interview

The psychosocial interview includes a multi-generational diagram of the applicant's family and social network (genogram). A Sample Genogram Template ([OCFS-5183G](#)) is provided on the OCFS website, but any genogram template can be used for this process.

- Personal Reference Forms ([OCFS-5183H](#)), which have been sent by the LDSS or VA to each of the applicant's three personal references [[18 NYCRR 443.2\(c\)\(1\)\(v\)](#)]. The forms must be completed and returned directly to the home finder.
- The results of database checks and criminal history background checks requested by the LDSS or VA for each applicant and for any individuals 18 years of age or older who will be residing in the prospective foster home. See [Appendix 7-A](#), "Clearance Checklist" and Sections 7.6-7.8 of this chapter.

During the home study, it also must be established that the foster home meets certain health and safety standards and physical plant requirements [[18 NYCRR 443.3\(a\)](#)]. Foster care workers must continue to assess whether the foster home is compliant with these standards during home visits and casework contacts. See [Chapter 10](#) of this guide, "Assessing the Safety of Children in Foster Care."

- The physical facilities of the foster home or relative foster home must be in good condition and present no hazard to the health and safety of children.
- The foster home must be in substantial compliance with all applicable provisions of State and local laws, ordinances, rules and regulations concerning health and safety.
- The physical space, construction and maintenance of the foster home and premises must be in good repair and kept in a sufficiently clean and sanitary condition so that the physical well-being as well as a reasonable degree of physical comfort is assured the members of the foster family.
- Separate bedrooms are required for children of the opposite sex over seven years of age, unless the children are siblings or half siblings sharing the same bedroom and the alternative sleeping arrangement is consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.
- Not more than three persons may occupy any bedroom where children at board sleep, unless the children are siblings or half siblings and the occupancy is

consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.

- No bed may be located in any unfinished attic or basement.
- No child above the age of three years may sleep in the same room with an adult of the opposite sex. Children must not sleep together in the same bed with an adult.
- Each child must have sleeping space of sufficient size for the safety, comfort, and privacy of the child. Each child must have a separate bed or crib of sufficient size and cleanliness for the comfort and well-being of the child, with waterproof covering, if needed, and suitable bedding adequate to the season. Bunk beds may be used.
- There must be an adequate and safe supply of water for drinking and household use. Water from wells, springs or other private sources must be protected against contamination. There must be provision for hot water for washing and bathing.
- The dwelling must have window barriers, including window screens, guards and/or stoppers above the first floor of the foster home.
- Heating apparatus must be safe and adequate to provide for the reasonable comfort of children in the home.
- Adequate bathing, toilet and lavatory facilities must be provided and kept in sanitary condition.
- The home must be free from fire hazards and equipped with at least one smoke detector and one carbon monoxide detector.
- No certified or approved foster parent may rent rooms to lodgers or boarders or receive and care for maternity cases, except as part of the foster care program, or receive or care for convalescent cases or conduct any business on the premises which might adversely affect the welfare of children, unless permitted by the authorized agency which certified or approved the home.
- All firearms, rifles and shotguns, as defined in Section 265.00 of the Penal Law, must be securely stored and must be maintained in compliance with applicable State and local standards regarding the licensing, storage and maintenance of such weapons.

## 5. Final assessment and determination

At the completion of the applicant's home study, the LDSS or VA must complete a *Final Assessment and Determination Form* ([OCFS-5183K](#)). The form is designed to assist caseworkers in assessing and summarizing all the information regarding applicants and their households.

The caseworker must consider whether all of the regulatory standards set forth in 18 NYCRR Part 443 have been satisfied. Based on information gathered in the Household Composition and Relationships Form ([OCFS-5183F](#)), the caseworker summarizes how this

data affects the applicant's ability to be an effective foster/adoptive parent. Strengths, considerations, and supports must be listed for each section.

The determination of whether to approve or not approve the application is made by the home finder and his/her supervisor. The text of the [OCFS-5183K](#) form must be copied and pasted into the FAD stage in CONNX. A copy of the form must be printed out and given to the applicant, who may comment on the report in the section designated for that response. The form must then be signed and dated by the applicant, the home finder, and the supervisor.

When the LDSS or VA decides to discontinue a home study or deny certification or approval, the agency must provide the applicant with the written decision and the reasons for it and offer an interview to discuss the decision. Any decision to discontinue a home study or deny certification or approval must be approved by at least one level of supervisor unless the home study was discontinued at the request of the applicant [[18 NYCRR 443.2\(c\)\(3\)](#)].<sup>6</sup>

An application for certification or approval that has been pending for six months due to failure of the applicant to provide information requested or to cooperate with the approval or certification process is considered to be expired. This expiration will require a new application if the prospective foster parent still wants to seek certification or approval [[18 NYCRR 443.2\(c\)\(6\)](#)].

## 6. Approval/certification

After the application has been approved by the LDSS or VA, the prospective foster parent must complete the *Resource Characteristics Form* ([OCFS-5183I](#)). The form provides a list of characteristics of children who may need a foster care/adoption placement. The applicant must check "yes" or "no" by each child characteristic that the family is willing and able to accommodate.

According to state regulations, each certified and approved foster parent must execute an agreement to operate a foster family boarding home with the LDSS or VA. The standard *Foster Family Agreement with Authorized Agency* ([OCFS-5183J](#)) states that the foster parent will:

1. Enable children in foster care to mingle freely and on equal footing with other children in the household and in the community, to be accepted as members of the household and share in its pleasures and responsibilities, and to apply the reasonable and prudent parent standard [[18 NYCRR 441.25](#)]
2. Arrange for children of school age to attend school regularly as required by the Education Law
3. Never leave children under the age of 10 years alone without competent adult supervision, nor children above that age except as might reasonably be done by a prudent parent in the case of his or her own children

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<sup>6</sup> OCFS. "Foster/Adoptive Home Certification or Approval Process" ([18-OCFS-ADM-07](#))

4. Except as permitted by the appropriate LDSS or VA, never use a foster family boarding home to care for more than two infants under two years of age, including the foster parents' own children, except in those cases where the foster parents have demonstrated the capacity to do so and a sibling group would otherwise have to be separated
5. Provide children with sufficient nutritious, wholesome and properly prepared food, served at regular hours. Children in foster care must be permitted to eat meals at the table in the same manner as other family members with due consideration to their age and special needs
6. Keep the clothing of children provided by the LDSS or VA, parent, or foster parent in proper condition of repair and cleanliness; endeavor to provide children with a sufficient quantity of clothing, adapted to seasonal conditions, and of such style and quality as not to distinguish them from other children in the community
7. Provide for each child sufficient individual toilet articles and towels, suitable to the child's age and gender, and individual drawer and closet space
8. Provide a suitable, well-lighted place for children of school age to do their homework
9. Recognize and respect the religious wishes of the natural parents of children in care and endeavor to protect and preserve their religious faith
10. Endeavor to cooperate with LDSS or VA staff in the implementation or review of each child's service or discharge plan and to inform the LDSS or VA of any incident or event that affects or may affect the child's adjustment, health, safety or well-being and/or may have some bearing upon the current service plan
11. Provide a family atmosphere of acceptance, kindness, and understanding and endeavor to give each child the support, attention, and recognition that facilitates adjustment to the home and that promotes the child's normal development
12. Permit an authorized representative of the agency to enter the home to investigate in good faith a formal complaint regarding care of the child in foster care
13. Inform the LDSS or VA agency of any changes in marital status, family composition, or the number of persons residing in the home, and of any changes in the physical facilities comprising the foster home
14. Agree to cooperate in facilitating regular, biweekly visitation or communication between minor siblings or half-siblings who have been placed apart, unless as determined by the LDSS or VA that such contact would be contrary to the health, safety, or welfare of one or more of the children, or unless the lack of geographic proximity precludes visitation
15. Agree to redisclose confidential HIV-related information concerning the child in foster care only to persons or entities, other than those authorized to receive access in accordance with the Public Health Law, for the purpose of providing care, treatment, or supervision of the child in foster care, or with a specific written authorization signed by the commissioner of the LDSS or the commissioner's designated representative. Where confidential HIV-related information is disclosed, the following written statement must accompany it:

“This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of HIV-related information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.”

Exceptions to the regulatory standards set forth in 18 NYCRR Part 443, other than statutory requirements, may be proposed by the LDSS or VA as part of the foster home approval process when the LDSS or VA determines that such an exception is necessary to board a child in foster care; is in the best interests of the child; and is consistent with the health, safety, and welfare of the child. The authority to grant exceptions does not apply to certified foster homes.

Any exception, however, is tentative only and subject to review and approval by the LDSS. Such decisions must be made by supervisory staff within the LDSS who do not have direct supervisory responsibilities over the case management of the particular child in foster care. Boarding arrangements will be made contingent on such approval. All exceptions must be requested in writing by the authorized agency and, if approved, the LDSS must document how the granting of the request relates to the best interests of the child [18 NYCRR 443.3(b)].

Upon the successful completion of the certification or approval process, the LDSS or VA prints out a certificate or letter of approval generated in CONNX and provides it to the applicant(s) [18 NYCRR 443.3(f)].

## **7. Certification/approval as both foster and adoptive parent**

A person seeking certification or approval as a foster parent may concurrently apply for approval as an adoptive parent. Many of the standards for approval as an adoptive parent are the same as those for the certification or approval of a foster parent, so an applicant for concurrent approval will not be required to submit dual documentation to the authorized agency [18 NYCRR 443.9(a) and (b)]. When dual certification is sought, the LDSS or VA should use the foster boarding home templates in CONNX.

Applicants must meet the standards for adoptive parents as described in state regulation [18 NYCRR Part 421]. These regulations include specific marital standards for adoptive parents, not otherwise applicable to foster parents, as well as the requirement for an adoption study [18 NYCRR 421.16].

### ***a. Adoption study findings***

When an adoption study has been completed and the LDSS or VA intends to approve an applicant, the LDSS or VA must prepare a written summary of the study findings and activities and make the summary available to workers in the agency or other agencies responsible for making placement decisions about children. The applicant(s) must have the opportunity to review the summary and enter any reactions as an addendum. After

the applicant(s) and the caseworker have signed the written summary, the agency must provide a written notice of approval to the applicant(s) [18 NYCRR 443.9(d)].

***b. Rejection of adoption application***

The LDSS or VA may reject an applicant during the home study process if the applicant does not allow the home study to be carried out [18 NYCRR 443.9(f)].

An applicant may be rejected after an adoption study is complete, based on the determination that:

- The applicant is physically incapable of caring for an adopted child
- The applicant is emotionally incapable of caring for an adopted child, or
- The applicant's approval would not be in the best interests of the children awaiting adoptions

A decision to reject an applicant must be made by at least two staff members in conference, one of whom shall be at a supervisory level. The record must reflect the names of the participants in the decision and the reason for the decision [18 NYCRR 443.9(h) and (i)].

The applicant must be informed about the reason(s) the application was rejected, with specific notification if the decision to deny was based in whole or in part on the existence of an indicated report of child abuse or maltreatment. The notification must offer the applicant the opportunity to discuss this decision in person with the worker's supervisor. The applicant may apply for an OCFS administrative hearing regarding the rejection of the application for approval as an adoptive parent and must be informed about how to do this [SSL §372-e; 18 NYCRR 443.9(l)].

If the LDSS or VA determines that an applicant has not satisfied the standards for approval or certification as a foster parent or approval as an adoptive parent or both, the LDSS or VA must apply the applicable standards for the denial of an application for approval or certification as a foster parent, and/or the standards for the denial of an application for approval as an adoptive parent [18 NYCRR 443.9(p)].

## **8. Renewal of certification/approval**

Foster home certification or approval must be renewed each year. LDSS/VA practice and procedure for annual renewal of a foster home's certificate or letter of approval must include the following [18 NYCRR 443.10(a)]:

- A written evaluation of the home and family that uses the same criteria as were used for the initial certification or approval under 18 NYCRR Part 443
- A written evaluation of the care provided children in the home and the working relationship of the foster parents or relatives with the LDSS or VA
- A written statement from a physician about the foster family's or relative family's health, if it has been two years since the date of the last medical exam

- An oral review of the evaluation with the foster parent or relative foster parent before the certificate or approval is renewed
- The completion of a criminal history record check for each person over the age of 18 who is currently residing in the foster home, if that person has not previously had a criminal history record check completed (e.g., a person who entered the home since the preceding certification or approval, or a person who reached age 18 during that period)

The written evaluation must identify issues that would require the LDSS or VA to take action to protect the health, safety or well-being of children in care in that foster home. Issues relating to the lack of cooperation by the foster parent to support the foster child's permanency plan, or to allow agency staff access to the foster child, raise red flags that the LDSS or VA needs to address.

The obligation of the LDSS or VA certifying or approving the foster home to assess the safety of any foster child in such home exists during the entire period of certification or approval. The LDSS or VA must continually assess the quality and capacity of the foster home. If concerns are identified at any time, the LDSS or VA must assess, review, and take action to address the safety needs of the foster child.<sup>7</sup>

Recognizing the important role that youth voice provides in improving the child welfare system and outcomes for children and youth in foster care, LDSSs and VAs are required to incorporate the youth voice into the annual renewal process. Caseworkers gather information from youth concerning their foster home experiences as part of their regular casework contacts.

At a minimum, at least once each year, the child's case planner or caseworker must give each youth age 14 and older placed in a certified or approved foster home the opportunity to respond to the Youth Voice Questions ([Appendix 7-B](#)). The foster parents should not be present for these discussions. Districts and agencies must explain to the youth that their participation in this evaluation process is voluntary.<sup>8</sup>

An exception to nonrenewal for approved foster boarding homes may be made when there is a failure to meet one or more of the criteria required for approval but it is determined that continuity of the family relationships and ongoing care of the child in the relative's home is in the child's best interests and is not inconsistent with the health, safety and welfare of the child [18 NYCRR 443.11(c)]. Excluding statutory requirements, exceptions to the criteria required in the agreement executed between the foster parents and the authorized agency may be proposed by the authorized agency as part of the foster boarding home approval process when the authorized agency determines that such exception is necessary to board a foster child; is in the best interests of the child to effect such boarding arrangement; and is consistent with the health, safety, and welfare of the child. Any exception is tentative and subject to review and approval by the LDSS with legal custody of the foster child. Boarding

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<sup>7</sup> OCFS. "Requirements Relating to CPS Reports Involving Foster Parents" ([16-OCFS-ADM-13](#))

<sup>8</sup> OCFS. "Requirements for Incorporating Youth Voice into the Annual Renewal of Certified and Approved Foster Homes" ([10-OCFS-ADM-09](#)).

arrangements will be made for the child contingent on such approval. All exceptions must be requested in writing by the authorized agency [18 NYCRR 443.3(b)(16)].

The decision to effectuate an agreement containing an exception must be made by supervisory staff within the LDSS who do not have direct supervisory responsibilities over the case management of the foster child. Where the proposed agreement is approved, the LDSS must document how the granting of the request relates to the best interests of the child. Should it be determined that the exception is not necessary or in the best interests of the child, upon notice to the agency, the LDSS with legal custody of the foster child must disapprove the proposed arrangement [18 NYCRR 443.3(b)(16)].

## 9. Reopening a foster home

Agency practice and procedure for reopening a foster home includes [18 NYCRR 443.10(b)]:

- The completion of a new application, including a database check by the SCR and the Justice Center for cases of abuse or neglect, and, if the applicant or any other person 18 years of age or older residing in the home lived in another state at any time during the five years preceding the new application, the sending of a request for child abuse and maltreatment information from the applicable child welfare agency in each such state of previous residence
- The completion of DCJS and FBI criminal history record checks
- An update of the home study, which must include a written evaluation of the home that uses the criteria for certification or approval
- A physician's written statement concerning the foster family's health or the relative's family health, or a physician's report of a medical exam that was completed within the past year
- An oral review of the evaluation with the foster parent

## 10. Application by spouse of foster parent

When an adult spouse of a foster parent comes into the previously certified or approved foster home and applies for certification or approval, agency practice and procedure include [18 NYCRR 443.10(c)]:

- The completion of a new application, including a database check by the SCR and the Justice Center for cases of abuse or neglect, and, if the adult spouse lived in another state at any time during the five years preceding the new application, the sending of a request for child abuse and maltreatment information from the applicable child welfare agency in each such state of previous residence
- Completion of DCJS and FBI criminal history record checks
- Completion of a medical exam for the applicant
- An update of the home study

## D. Reasonable and prudent parenting

OCFS regulations provide the following definitions derived from the federal Preventing Sex Trafficking and Strengthening Families Act (2014) as part of the reasonable and prudent parent standard mandate.

The “reasonable and prudent parent standard” (RPPS) is defined as a 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 [18 NYCRR 441.25(a)(1)]. For detailed information, see [Appendix 7-C](#), “Applying the Prudent Parent Standard” and [Appendix 7-D](#), “‘Know’ Before You Say ‘No.’”

These activities are those that are age or developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and are suitable for the specific child based on his/her cognitive, emotional, physical, and behavioral capacities. Examples of activities or items include, but are not limited to, participation in school field trips, events, and school sports teams; spending time with friends; dating; using social media; obtaining a job; or volunteering.

The RPPS must be applied by the foster parent with whom the child in foster care has been placed or by the LDSS or VA that is caring for the child in a child care facility, including an institution, group residence, group home, agency boarding home or supervised independent living program [18 NYCRR 441.25(b)]. Each such facility or program must have at least one employee designated to be the caregiver who is authorized to apply the RPPS. Such employees and all foster parents must be trained in how to use and apply the RPPS [18 NYCRR 441.15(c)].

The application of the RPPS is a child-specific, case-by-case process. It is therefore important for the caregiver to be familiar with the child for whom the caregiver is making reasonable and prudent parenting decisions. For example, LDSSs and VAs must give foster parent information about that child [18 NYCRR 443.2(e)(3)]. This information includes, but is not limited to, information on the health of the child, handicaps and behavioral problems, school and educational experiences, the relationship between the child and his/her birth parents and placement and discharge goals.

For more information, see the OCFS Policy Directive, “Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care” ([15-OCFS-ADM-21](#)).

### 1. Activity costs and immunity from liability

The cost associated with an activity may be a factor in considering if it is possible for the child to participate. All costs should be reasonable and allowable. The rate received by the foster boarding home or congregate care facility is expected to cover most of the expenses involved with the care of the child, including most routine activity expenses. Some unusual costs may be allowable as special payments subject to the approval of the applicable LDSS

[18 NYCRR 427.3]. For these more expensive activities, foster parents should work with their LDSS.

State law provides that a caregiver will not be held liable for injuries incurred by a child as a result of participation in age- or developmentally appropriate activities where the caregiver's decision to allow such participation was made in conformance with the RPPS as set forth in law and that the caregiver had been trained in the RPPS in accordance with federal law and OCFS regulation [SSL §383-a]. Such training must have been approved by OCFS. In such cases where the caregiver may apply the immunity protection, a LDSS or VA also may benefit from the immunity protection.

There are steps a caregiver can take to limit the potential exposure to liability and, even more importantly, to limit the potential for injury to a child in foster care.

LDSSs, VAs, and caregivers are encouraged to utilize a collaborative approach via shared parenting to reduce the potential exposure to liability. This includes promoting partnership among the birth/adoptive parent (where appropriate), guardian or prior caretaker, caseworker, case manager, caregiver, and the child (if age and developmentally appropriate) to jointly make decisions that impact and influence the day-to-day activities of the child. This approach should begin when developing the initial FASP and continue throughout the child's placement in foster care. Using this approach when the child is first placed is a strategy for establishing guidelines for day-to-day decisions about activities, e.g., riding a bike, playing sports and other such decisions. For other activities, such as traveling out-of-state on a family vacation or getting a driver's license, a larger discussion may be indicated prior to making the decision.

To assist in limiting exposure to liability, it is recommended that caregivers document their communications with the parties involved in applying the standard for each of the foster children for whom the caregiver is responsible. For example, a foster parent may consider documenting communications in a notebook.<sup>1</sup>

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<sup>1</sup> OCFS. "Immunity From Liability When Applying the Reasonable and Prudent Parent Standard" ([17-OCFS-ADM-01](#))

## E. Payments to foster parents

The foster care board rate, which is set according to the child's age and other factors, is intended to reimburse foster parents for the cost of caring for the child. Each LDSS (ACS in New York City) is authorized to set its own rate for foster children in its legal custody. Notification of the rate is sent within 30 days of placement from the LDSS or VA to the foster parent. The foster parent can request a conference to discuss the rate and, if after the conference, the foster parent is still not satisfied with the rate, the foster parent may request a fair hearing to review the decision. However, a request for a fair hearing must be made within 60 days of the notification of the rate. Information on how to request a fair hearing is on the back of the "Notification of Foster Care Room and Board Payment" form [LDSS-7018](#)).

There are three levels of payment categories for foster boarding homes: Normal/Basic, Special, and Exceptional. As part of the rate notification, foster parents will receive information that explains the requirements for designating children as special and exceptional and for receiving higher payments for providing such care.

The state reimburses LDSSs and VAs for the payments made to foster parents, up to a Maximum State Aid Rate (MSAR) that is set by the state and distributed to agencies every year. LDSSs may decide to pay foster parents more or less than the MSAR.

The board and care rates for Normal/Basic Foster Care vary by region. The Metropolitan Region consists of New York City, Nassau, Suffolk, Westchester and Rockland counties. The Upstate Region includes all of the other counties in New York State. The difference in rates is due to the higher cost of shelter in the New York Metropolitan Region. There are no regional differences in the maximum allowances for Special and Exceptional Foster Care.

### 1. Normal/Basic category

The board and care payments to foster parents caring for children in the Normal/Basic category cover the cost of food, personal care, household furnishings and operations, educational materials, recreation, normal transportation, and shelter. Shelter includes rent or homeowner's costs, maintenance, repairs, fuel, and other utilities.

The child has no diagnosed physical or mental handicap that requires special care. There may be problems related to neglect, mistreatment or improper care and training, such as:

- Poor nutrition and bad eating habits
- Problems with sleeping
- Poor hygiene or incomplete toilet training
- Inability to relate to others, poor social skills
- The services to be provided under this category include:
  - Basic physical care including regular, well-balanced meals and a secure, well-maintained home
  - Supervision of the child's medical and dental care

- Personal care and supervision, attention, and affection appropriate to the child's age
- An emotional climate that encourages warm interpersonal relationships, trust, and the development of the child's self-worth and self-discipline
- Opportunities for educational, social, and cultural growth through suitable reading materials, toys and equipment
- Associations with peer groups and opportunities for experiences in school, church and community
- Encouragement of the child's talents and interests
- Cooperation with the placing agency by being available for case conferences and in-service training
- Assistance in arranging for contact with the child's natural family, when appropriate<sup>1</sup>

## 2. Special category

The payments for children in this category include the services listed for the Normal/Basic category, plus an allowance to compensate the foster parents for the additional services that some children require. These include children that:

- Suffer from pronounced physical conditions that have been certified as a physician as requiring a high degree of physical care
- Are awaiting family court hearings on PINS or juvenile delinquency petitions, or have been adjudicated as PINS or juvenile delinquents
- Have been diagnosed by a qualified psychiatrist or psychologist as being moderately developmentally disabled, emotionally disturbed, or having a behavioral disorder to the extent that they require a high degree of supervision
- Are refugees or Cuban/Haitian entrants and are unable to successfully function in their communities because of factors related to their status as refugees or entrants. Such factors may include an inability to communicate effectively in English, a lack of effective daily living skills, an inability to relate to others in the community
- Enter foster care directly from inpatient hospital care. Such children are eligible for special foster care services for a period of one year

Foster parents receiving the Special payment rate are expected to provide more personal involvement and time than they would for children in the Normal/Basic category. The foster parent should spend more time talking to and working with the child and provide extra opportunities for skill development. The foster parent must be patient and be able to give attention and affection without a positive response from the child. Foster parents receiving Special payments also should be able to provide prescribed physical care, such as special diets, medications, or assisting in a program of physical therapy [18 NYCRR 427.6(c)].

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<sup>1</sup> OCFS. [Standards of Payment for Foster Care of Children Program Manual](#), Chapter 8, Section B-3

### 3. Exceptional category

Foster parents caring for children in the Exceptional category are expected to provide the services required for children in Normal category, and also to provide close supervision for 24 hours a day. The family environment must be carefully structured to enable these children to live in a foster home rather than in an institution or group care. These include children that:

- Require, as certified by a physician, 24-hour-a-day care provided by qualified nurses or persons closely supervised by qualified nurses or physicians
- Have severe behavior problems characterized by the infliction of violence on themselves or other persons or their physical surroundings, and who have been certified by a qualified psychiatrist or psychologist as requiring high levels of individual supervision in the home
- Have been diagnosed by a qualified physician as having severe mental illnesses, such as child schizophrenia, severe developmental disabilities, brain damage, or autism
- Have been diagnosed by a physician as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)-related illness

Foster children who have tested positive for HIV infection and have subsequently tested negative for HIV infection due to seroconversion remain eligible for exceptional services for a period of one year from the date of the test that indicated seroconversion.

Foster parents receiving the Exceptional care payment are expected to provide supervision on a one-to-one, 24-hour-a-day basis. The foster parents must be able to work with the professionals involved in the treatment plan, such as physicians, nurses, social workers, psychologists, and psychiatrists. They must be able to accept assistance and guidance in caring for the child [[18 NYCRR 427.6\(d\)](#)].

### 4. “Equivalent conditions” and training

The LDSS commissioner has the authority to approve board and care rates for Special and Exceptional foster care based on a list of “equivalent conditions” developed at the county level and approved by OCFS. LDSS commissioners also may approve a Special or Exceptional rate in response to a specific request, which must be approved by OCFS within 60 days.

A designation of the level of care can be changed at any point during placement as the child’s needs change or become apparent. If the level of difficulty changes (decreases or increases) due to the child’s need for care and supervision, the board rate will also change. The services expected of the foster parents will also change.

In order to be eligible to receive a special or exceptional rate, the foster parent must demonstrate his or her ability to care for children with special or exceptional conditions through training and experience. Foster parents receiving Special rates must complete no less than four hours of training per year; those receiving Exceptional rates must complete no

less than five hours of training per year. Initial and ongoing training for foster parents receiving Special or Exceptional board and care rates may be provided directly by the LDSS or VA staff, or through contracts with other human services agencies that are qualified to provide such training.

## 5. Clothing payments and standards

Each LDSS sets clothing allowance rates up to the maximum rate allowed by New York State. A regular clothing allowance, based on the child's age, is generally included with the board rate, but may be included as a separate allowance. Special payments may be made under certain circumstances (see [Section 6](#) of this chapter).

The agency staff must review and evaluate the child's clothing needs on a regular basis, and, when appropriate, work with the foster parent to ensure that [[18 NYCRR 427.16](#)]:

- Additional clothing is provided for the child as needed
- Clothing is clean, attractive, and well fitting
- The child participates in the planning and the selection of his/her clothes, consistent with his/her age and maturity
- Advance notice is given for special clothing requests.

Any clothing purchased for a child in care belongs to the child and should be taken along whenever he/she moves to another living arrangement or is returned home. It is expected that a child will leave with sufficient, clean clothes.

## 6. Special payments

“Special payments” are reimbursements to foster parents for expenditures made on behalf of a child residing in a foster boarding home for items, costs, or services that are necessary for the child but that are not included in establishing rates for board, care, and clothing. Special payments include, but are not limited to, expenditures for the following:

- Special attire for proms, religious observances, and graduation, and for circumstances or occasions, such as school attendance or scouting activities, in which uniforms are necessary items of clothing
- School expenses such as books, activity fees, costs of field trips, club dues, school jewelry, school pictures, art supplies, and yearbooks
- Music, art, and dancing lessons, and the purchase or rental of items needed to take part in such activities
- Gifts for birthdays, holidays, and other special occasions
- Extraordinary transportation and communication expenses, such as:
  - Transportation provided by the foster parents for visits with the staff of an authorized agency, the child's birth parents, siblings who continue to reside with

the birth parents, and siblings who are placed separately with relatives or who are in foster care or adoption homes

- Payments to the birth parents, legal guardians, other relatives, and significant others, for travel in excess of 50 miles (including the first 50 miles) to visit children in foster care
- The costs of public transportation when it is necessary for school attendance, if such costs are not reimbursed by the school district
- Other exceptional transportation required by the authorized agency or for agency-approved reasons
- Extraordinary telephone costs for communication with birth parents and siblings
- Day care and baby-sitting services when necessary for the care and supervision of a child in foster care
- Special furniture/equipment for the care of children in foster care such as cribs, high chairs, and car seats
- Window guards necessary to protect the safety of a child in foster care
- Special recreational/hobby expenditures, including travel expenses such as lodging; tools; and the costs of transportation, entry or use fees, uniforms, and materials (these expenditures are limited to \$400 per calendar year per child in foster care)
- Compensation to a foster parent for the damage to and/or loss of personal property owned by the foster parent that is caused by the child in foster care in his or her care to the extent not covered by insurance (requests for such compensation must be submitted in writing to the appropriate LDSS within 30 days from the date the foster parents become aware of such damage or loss of personal property, and compensation is limited to a maximum of \$1,000 per child in foster care per foster boarding home over a two-year period from the date of placement in the home)
- Day camp or residential summer camp costs, including registration and transportation expenses, for a maximum of two weeks
- Nonmedical needs of a handicapped child, including special equipment or clothing that is not covered by medical assistance, which arise from the child's handicap
- Costs of diapers for a child from birth to the date of the child's fourth birthday

Requests for special payments for items, costs, or services must be reviewed and approved by the LDSS. An LDSS may wish to make special payments to a foster parent for items, costs, or services not included in the list above. In order to be eligible for state reimbursement for such payments, the LDSS must obtain approval from the OCFS Regional Office [[18 NYCRR 427.3\(c\)](#)].

## 7. Release of a child's Social Security Number

Foster parents may, in some circumstances, may be eligible for state and federal income tax benefits. The payments they receive from the agency for board and care of foster children are not taxable. In addition, the foster parent may be able to claim the foster child as a dependent (and receive a tax exemption for that child), if the child meets the criteria for a "qualifying child." It is recommended that foster parents consult with the IRS or their tax preparer to determine which tax benefits may be available to them.

To help prevent identity theft, foster parents generally are not given a foster child's Social Security number (SSN). Children may be targeted for this crime because they have clean credit histories and it may be many years before the theft is discovered. Foster parents may request the release of a child's SSN for the express purposes of claiming an income tax exemption [OCFS-4743](#) or receiving Section 8 housing assistance by completing OCFS form [OCFS-4743a](#).

The form must then be submitted to the LDSS that has legal custody of the child. VAs are not authorized to release the SSNs of children in foster care. If the foster parent's home is approved or certified through a VA, the VA may submit the completed form to the LDSS with legal custody of the child on behalf of the foster parent.

For more information, see OCFS Policy Directives [16-OCFS-INF-02](#) and [17-OCFS-INF-04](#).

## F. Investigation of alleged abuse or maltreatment

The significance of safety of a child in care is reflected by its place as the first right set forth in the “[Bill of Rights of Children and Youth in Foster Care](#),” which states:

As a child or youth in foster care in the State of New York, I have the right:

To live in a safe, nurturing, healthy, and suitable residence, to stay safe and to be free from exploitation, where I am treated with respect and where I have enough food and adequate clothing. I have the right to the least restrictive, most home-like setting where I can safely live and receive services.

When there is a report of abuse or maltreatment in a residential (congregate) care facility, the investigation is the responsibility of the Justice Center (see [Chapter 9](#) of this guide, “Residential Care Facilities”).

When a certified or approved foster parent is the subject of a report of suspected child abuse or maltreatment involving a child in foster care, there are several agencies that have an interest in the report and the safety of the children in the foster home. These agencies include: the LDSS that is conducting the CPS investigation, the LDSS with legal custody of the foster child named in the CPS report, and the LDSS or VA that certified or approved the foster home. In some cases, they all may be the same LDSS. However, often there will be more than one interested agency.

Each agency has its own legal duties and responsibilities to address and support the safety and well-being of the foster children in the foster home. Each agency must execute those duties and responsibilities as set forth in applicable statutes, regulations, and policies.<sup>1</sup>

### 1. During the CPS investigation

According to the OCFS *Child Protective Services Program Manual*, the legal requirements for conducting investigations of reports involving a child in foster care are the same as the requirements for any in-home setting involving the birth children of the subject of the report.<sup>2</sup>

The LDSS in the county/City of New York where the foster home is located will conduct the investigation and must notify the LDSS that has care and custody or guardianship and custody of the child or the LDSS or VA that certified or approved the foster home, if different from the custodial agency. See [Appendix 7-E](#) for a model notification form letter to be sent to the LDSS with legal custody. The LDSS or VA that certified or approved the foster home is listed in the CONNX case record.

A full CPS investigation includes obtaining information not only from the subject of the report, the child, family members, and the source of the report, but also from other collateral sources that may include, but are not limited to, agencies providing services to the family. When a CPS investigation involves a child in foster care, the LDSS staff members

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<sup>1</sup> OCFS. “Requirements Relating to CPS Reports Involving Foster Parents” ([16-OCFS-ADM-13](#))

<sup>2</sup> OCFS. *Child Protective Services Program Manual*, [Chapter 7](#), Section B-5.

responsible for the child and home are necessary collateral sources.<sup>3</sup> This standard also applies to staff of the LDSS or VA with case management or case planning responsibilities over the named foster child or when the LDSS or VA has certified or approved the foster home.

Access to information on a pending or indicated CPS report is available to any “duly authorized agency having the responsibility for the care or supervision of a child who is reported to the central register of abuse and maltreatment” [SSL §422(4)(A)(c)]. This authorization includes the LDSS with legal custody of the child in foster care named in the report and the LDSS or VA responsible for supervision of the child in care. Accordingly, the CPS conducting an investigation may inform an LDSS or VA of the allegations and the custodial LDSS and certifying agency may share relevant information with the CPS agency conducting the investigation.

While the CPS investigation is pending, the custodial LDSS and the certifying or approving LDSS or VA must continue to carry out their statutory, regulatory, and OCFS policy responsibilities. These responsibilities include, but are not limited to: casework contacts; case planning; assessment of the appropriateness of the placement, including safety of the child; and compliance by the foster parent with applicable foster home certification or approval standards [18 NYCRR 428.6, 441.21 and Part 443].

## 2. Determination of the CPS report

Upon completion of the investigation and the determination of the CPS report involving a child in foster care, the investigating CPS informs the LDSS with custody of the child of the results of the investigation.<sup>4</sup>

The individual agencies involved in the case must determine what, if any, action must be taken in regard to the child’s placement and the certification or approval of the foster home. If the decision is made to remove the child from the foster home, the standards set forth in state regulations must be followed (see [Section F](#) of this chapter).

If the decision is made to decertify or revoke approval of the foster home, the procedures set forth in state regulations apply (see [Section H](#) of this chapter). In some cases, based on the facts of the case, it may be appropriate to maintain the child in the foster home. In all such cases, the decision and its basis must be sufficiently documented in CONNX.

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid., Chapter 7 Section B-8.

## G. Removing a child from a foster home

Whenever an LDSS or VA proposes to remove a child from a foster family boarding home, it must provide written notice to the foster parents of the intention to remove the child. Notification must be given at least 10 days prior to the proposed date of the removal, unless the health or safety of the child requires that the child be removed immediately from the foster home. The foster parents must also be informed that they may request a conference with the LDSS or VA to review the proposed action, be advised of the reasons for the child's removal from the home and be afforded an opportunity to submit reasons why the child should not be removed.

The LDSS or VA also must notify the attorney for the child of a planned placement change at least 10 days in advance of the anticipated change in placement or as soon as the decision is made, and no later than the next business day after an emergency move occurs.<sup>1</sup> A model form ([OCFS-4948](#)) is available for this purpose.

While New York State law does not expressly mandate the parental notification of a child's change of foster care placement, it is OCFS's expectation that parents who continue to have parental rights will be involved in planning for the child's move or, where the move is made on an emergency basis, will be immediately informed and engaged in making any needed modifications to the FASP and/or the visiting plan.<sup>2</sup>

Caseworkers should be sensitive to foster parents' sense of loss when a child is removed from the home for any reason. See [Chapter 8](#) of this guide, "Recruiting and Supporting Foster Parents."

### 1. Removal conference

When foster parents request a conference, the LDSS must schedule the conference within 10 days of receipt of such request and shall send written notice to the foster parents, their representative, and the authorized agency, if any, at least five days prior to the date of such conference.

The LDSS must render a decision no later than five days after the conference. Written notice of this decision must be sent to the foster family parents and their representative, if any, and to the authorized agency, if any. Such decision must advise the foster family parents of their right to appeal to the Office of Children and Family Services and request a fair hearing in accordance with Section 400 of the SSL.

The child may not be removed from the foster family home until at least three days after the notice of decision is sent, or prior to the proposed effective date of removal, whichever occurs later [[18 NYCRR 443.5](#)].

When the 10-day notice is not provided because of a health or safety issue, and the foster child has been removed from the home, the foster parent is still entitled to a conference with the LDSS prior to seeking a fair hearing.

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<sup>1</sup> OCFS. "Notice of Placement Change to Attorneys for Children" ([10-OCFS-ADM-16](#))

<sup>2</sup> OCFS. "Parent Notification of a Child's Foster Care Placement Change" ([11-OCFS-INF-03](#))

## **2. Fair hearing**

If, after the conference, the foster parents still do not agree with the decision, they can request a fair hearing by contacting:

New York State Office of Children and Family Services  
Bureau of Special Hearings  
52 Washington Street, Room 322  
Rensselaer, NY 12144

This is an administrative review by a hearing officer assigned by OCFS to hear the foster parent and the agency's views regarding the removal of the child. Foster parents have a right to be represented by legal counsel, and to present witnesses and oral and written evidence at the fair hearing. Foster parents have the right to appeal an adverse fair hearing decision to the New York State Supreme Court through an Article 78 proceeding. Even if the foster parents request a fair hearing, the agency has a right to remove the child following the conference decision.

## H. Returning a child to a prior foster home

It may sometimes be necessary to return a child to foster care after he/she has been discharged home, or a child is currently in foster care and it is appropriate to place the child out of a congregate level of care back into a foster home. Whenever a LDSS or a VA acting on behalf of a LDSS determines that it is in the best interests of a child to be placed in the foster family home in which the child was previously placed, the LDSS or VA must place the child with the child's prior foster parents.

The following factors must be considered in determining whether it is in the best interests of the child to place the child with his/her prior foster parents:

- Certification/approval status of the prior foster parent(s)
- Length of time in placement with prior foster parent(s) and quality of relationship that developed during the placement
- Length of time since placement with the prior foster parent(s)
- Basis for the child's discharge from placement with the prior foster parent(s)
- Willingness of prior foster parent(s) to accept returning child
- Willingness of child to return to prior foster parent(s)
- Availability of space in the foster home
- Ability of prior foster parent(s) to care for returning child
- Proximity to prospective adoptive parents, if return to care was caused by temporary disruption of adoptive placement
- Proximity to siblings in care, if applicable
- Compliance with standards for appropriateness of placement and other applicable OCFS regulations

In the event that the child has already been placed with foster parent(s) other than the prior foster parent(s), the following factors must also be considered in determining the best interest of the child:

- How well the child is faring in the new placement; and
- The impact on the child of removing him/her from the new foster parents and returning him/her to the prior foster parents.

The LDSS or VA must document the basis for the determinations that resulted in the placement of the child in a new foster family home, rather than with his/her prior foster parents [18 NYCRR 443.6].

## I. Closing a foster home

A foster home may be closed at the request of foster parents for a variety of reasons, such as the death of one foster parent, a move out of state, or a decision to stop fostering children and youth.

A LDSS or VA may require a foster home to close for health and safety reasons, when the home no longer meets the criteria for certification or approval, or when the LDSS or VA no longer has a need for a foster home with its particular characteristics. This can be done by either revocation or nonrenewal of the foster home's certificate or approval.

When the LDSS or VA decides not to renew or revoke a certificate or approval, it must notify the foster parent in a letter postmarked at least 20 days before the expiration date or decertification date of the certificate or approval. The reasons for nonrenewal or revocation must be specified in the letter. The agency must arrange for the foster parent or relative to meet with an agency representative to review the decision and the reasons for it.

LDSSs or VAs may make an exception to nonrenewal of an approved relative foster home when there is a failure to meet one or more of the criteria required for approval of a relative foster parent, but it is determined that continuity of the family relationships and ongoing care of the child in the relative's home is in the child's best interests and is not inconsistent with the health, safety and welfare of the child [18 NYCRR 443.11]. Such an exception may be made in the same manner and the same conditions as for an initial approval as set forth in 18 NYCRR 443.3(b)(16). See [Section C](#) of this chapter, "Renewal of certification/approval."

State law [SSL §378-a(2)(k)] requires OCFS to notify the Division of Criminal Justice Services (DCJS) when a person is no longer certified or approved as a foster parent or a foster, a foster home is closed, or an application for certification or approval has been withdrawn or denied. This function is carried out by the OCFS Criminal History Review Unit (CHRU).

When a foster home is designated as closed within the Foster Care Adoption Development (FAD) Stage in CONNX, that information is not automatically passed on to the CHRU. A separate notification must be sent by the certifying or approving LDSS or VA using form [OCFS-2113](#), "Notice of Foster Home or Adoptive Home Closure," within 30 days of the withdrawal or closure of the foster home. A notice also must be sent when an application for certification or approval has been denied, and the applicant has exhausted his or her appeal rights to the denial.

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## Chapter 8: Recruiting and Supporting Foster Families

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## Chapter 8

# Recruiting and Supporting Foster Families

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[Chapter 7](#) of this manual describes the various types of foster family boarding homes, the certification/approval process, and payments to foster parents.

This chapter focuses on two areas that require significant time and effort but are essential to the success of foster care programs: recruiting and supporting foster families.

Having a pool of well-prepared and supported families makes it possible for child welfare systems to provide placement stability and permanency for children and youth in foster care. By actively and continually developing foster, adoptive, and kinship families, agencies can have available a pool of families who will be able to meet the needs of the children and youth in foster care. Just as agency staff needs ongoing professional development in order to meet the ever-changing demands of their work, families need ongoing development so they can feel competent in caring for children and youth, accessing appropriate and high-quality services, and advocating for their children's needs.<sup>1</sup>

The assigning of recruitment (or homefinding) tasks varies from one agency to another, but effective recruitment practices are agency-wide responsibilities and they should be agency-wide priorities. Everyone on staff, from the receptionist to the agency director, should be committed to supporting prospective and current foster families and responding quickly and appropriately to their needs.

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<sup>1</sup> AdoptUSKids. "Develop and Support Families." Accessed at <http://www.nrcdr.org/develop-and-support-families>

## A. Recruiting foster families

The federal Multi-Ethnic Placement Act (MEPA) of 1994, as amended, prohibits the delay or denial of any adoption or placement in foster care due to the race, color, or national origin of the child or the foster or adoptive parents. It also requires states to provide for diligent recruitment of potential foster and adoptive families who reflect the ethnic and racial diversity of children for whom homes are needed.

LDSSs and VAs must conduct diligent recruitment by recruiting potential foster and adoptive parents who reflect the ethnic and racial diversity of children for whom homes are needed. They may conduct targeted recruitment activities by focusing efforts in neighborhoods and communities where families can be found to be a resource for the children in care. LDSSs and VAs who have contracts with LDSSs for the operation of an adoption or foster boarding home program are required to update their Recruitment and Retention Plans annually, focusing on compliance with MEPA.

An effective diligent recruitment program compares the general population to the population of the children in care and targets the children who are overrepresented in care. In order to do this, LDSSs and VAs need to examine the following populations, broken down by race:

- The number of children in care
- The number of children waiting to be adopted
- The number of children aging out of care without permanency
- Length of time in care<sup>1</sup>

A diligent recruitment plan may include the following elements:

- A description of the characteristics of the children for whom homes are needed
- Specific strategies to reach the individuals and communities that reflect the children in care, e.g., recruitment at community centers, religious establishments, school PTA meetings
- Various methods for providing prospective foster and adoptive parents with all the information they need, e.g., radio announcements, pamphlets, television ads, and informational sessions
- Strategies for maximizing access of prospective parents to the home study process, e.g., flexible hours to conduct home studies
- Strategies for the provision of training staff regarding working with diverse communities and dealing with linguistic barriers, e.g., utilizing interpreters, translating written information into different languages

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<sup>1</sup> OCFS. "Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996" ([15-OCFS-ADM-05](#))

## 1. Diligent recruitment

Many children coming into foster care have experienced repeated and long-term trauma in their young lives, resulting in a range of difficult behaviors and developmental problems. The needs of these children require that agency staff have the tools they need to serve children, foster families, and birth families. The system must be strategic and innovative in its approach to recruitment and retention of foster families.

Needs for specific types of foster homes vary among jurisdictions and fluctuate over time. It is important for LDSSs and VAs to collect and analyze data frequently to identify trends and reassess needs related to the availability of foster homes for children with specific cultural and ethnic backgrounds, older youth, sibling groups, and children with special physical and behavioral needs.

In general, the most successful programs use more targeted and child-focused recruitment strategies, with less focus on general strategies such as public service announcements and billboards. The more successful approaches require new techniques such as data analysis, social media, and “case mining” in order to succeed. However, they also emphasize long-held principles such as:

- Good customer service
- Responsiveness
- Need-driven support programs for foster families

Other characteristics of successful programs include:

- Capturing and analyzing data to identify needs and trends
- Providing good customer service to prospective and current foster parents
- Assisting prospective foster parents throughout the certification/approval process, and continuing that pattern after certification/approval and placement, involving foster parents, youth, and community resources in the process



### **Practice Tip:** *Where's the data?*

Data is crucial to developing an effective recruitment plan, and, in most cases, jurisdictions already have the data. They know their children in care, they know the ages and all other relevant information. However, they may not be analyzing the data to drive their recruitment practices.

An example is an agency that was constantly doing outreach for prospective families to foster older youth and teens. They mentioned it at every opportunity to engage prospective foster/ adoptive parents. Then they decided to review their data. They looked at their current pool of children in care, their current pool of foster homes and their record of placement over the previous 12 months. What they found is that they actually did a great job placing teens.

Instead, the data showed that their current greatest need was homes to foster sibling groups of three or more. This type of data helped the agency to revise the language and to develop a more specific ask to engage prospective foster parents.

Utilizing the data can drive a more targeted recruitment strategy.

Source: OCFS. *Revitalizing Recruitment: Practical strategies for finding and keeping foster, adoptive, and kinship homes*

- Diligently seeking kinship homes among extended family members and friends
- Supporting foster families with training, respite care, and peer assistance

When charged with recruiting prospective families to become foster parents, it is easy to become overwhelmed at the thought of such a daunting task. In many cases the first idea is to print up flyers and/or set up a table at the local library. It is time to think again. There is a more targeted recruitment approach that can be used to support efforts to recruit the right foster parents to meet the needs of children in care.

## **2. Targeted recruitment strategies**

When conducting targeted recruitment, LDSSs or VAs must include the following activities:

- Allow prospective foster and adoptive parents to participate in general recruitment activities, regardless of the race, color or national origin (RCNO) of the current targeted population
- Accept applications from prospective foster or adoptive parents who are not of the RCNO of the current targeted population
- Accept applications from prospective foster or adoptive parents interested in providing care to children who are of a different RCNO than themselves
- Develop their own diligent recruitment plans or utilize the services of private recruitment agencies that specialize in understanding a specific community or in identifying families for specific groups of children<sup>2</sup>

Effective targeted recruitment is based on an analysis of local data to understand current recruitment strengths and gaps. This helps to define the work that has been accomplished, identify areas that need more attention, and provide a launch pad for innovative solutions. The general sequence of steps in analyzing and using local data include:

*STEP 1: Describe the children in foster care.*

Develop a profile of the children in care with the agency. How many are there in total? How many in each category when broken down by age group, ethnicity, and special needs (sibling groups, healthcare needs, etc.)?

*STEP 2: Describe the homes currently available to them.*

Develop a profile of the foster homes and the beds currently available to the agency. What is the total number? How many are in each category when broken down by ages of children accepted in the home, ethnicity, and willingness to care for special needs?

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<sup>2</sup> OCFS. "Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996" ([15-OCFS-ADM-05](#))

**STEP 3: Make a plan to fill the gaps.**

Identify and reach out to families who can care for the children who are most in needs of homes.<sup>3</sup>

Once the gap is determined, targeted recruitment strategies can be used to engage prospective foster families that will meet the need. Targeted recruitment efforts are concentrated on narrowly defined, smaller groups of people in order to achieve a clearly defined objective. Targeted recruitment “routes the recruitment message directly to the people who are most likely to follow through to become foster or adoptive parents. It focuses on targeted communities where homes are needed, as well as on families with specific backgrounds that match the backgrounds and needs of children awaiting homes.”<sup>4</sup> When developing a robust recruitment plan, a targeted approach is likely to yield a bigger return on your investment of time, energy and effort to get the right families in the door and through the certification process.

The [National Resource Center for Diligent Recruitment](#) provides in-depth guidance on how to create and implement diligent recruitment programs and can be used as a resource for LDSSs and VAs.

**a. Develop partnerships with diverse communities**

Targeted recruitment relies on engagement with diverse racial, ethnic, and cultural communities. In some cases, previous interactions with child welfare or other government agencies have engendered a climate of mistrust in communities where agencies are seeking to recruit foster families. If this is the case, the first step in the recruitment process is to build trust. Establishing trust involves building relationships, often one at a time. Getting out of one’s comfort zone is a natural part of the process. When needed, efforts to re-establish credibility in the community can set the stage for agencies to work effectively with diverse families and meet the needs of children in care.

**b. Build cultural competence**

To build cultural awareness and competence, organizations and individuals must assess their attitudes, practices, and policies in relation to the needs and practices of the targeted community. “Cultural competence is having an awareness of one’s own cultural identity and views about difference, and the ability to learn and build on the varying cultural and community norms... It is the ability to understand the within-group differences that make each [person] unique, while celebrating the between-group variations that make our [community] a tapestry.”<sup>5</sup> This understanding informs and expands one’s experience in engaging diverse communities as both partners and prospective foster parents.

As agencies develop relationships in target communities, they can work with these partners to develop a plain-language message that explains the impact of

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<sup>3</sup> OCFs. “Taking Action” Accessed at [http://www.recruit4fostercare.org/taking\\_action.html](http://www.recruit4fostercare.org/taking_action.html)

<sup>4</sup> Annie E. Casey Foundation. (2012). *Building Successful Resource Families Practice Guide: A Guide for Public Agencies*.

<sup>5</sup> National Education Association. “Why Cultural Competence?” Accessed at <http://www.nea.org/home/39783.htm>

Disproportionate Minority Representation (DMR) on children and youth and describes the need for more foster families in affected communities. Trust-building is also encouraged by taking advantage of opportunities to work alongside faith, ethnic and civic organizations within the targeted communities. Other measures include:

- Translate materials such as recruitment brochures, applications, flyers and posters into Spanish or other languages of the targeted communities
- Ask foster families from the targeted communities to serve as co-trainers for pre-service training
- Conduct recruitment efforts at local ethnic fairs and community events alongside members from the community
- Make joint contacts (agency staff and foster parents from the targeted communities) with prospective foster families
- Ask existing foster families from the targeted communities to contact prospective foster families who have dropped out or slowed their momentum toward certification
- Conduct informational meetings in other languages and/or on different days to accommodate the needs of certain ethnic or religious communities
- Create a series of recruitment videos to meet the needs of your target population (e.g., families of color, Spanish or Mandarin speaking, Muslim or Orthodox Jewish communities)
- Implement a dedicated telephone line for foster family inquiries with a recording in multiple languages
- Support efforts of faith, ethnic and civic organizations by co-sponsoring health events, conferences, community-based fairs, etc. Lend your presence and expertise to these events and partners to show the community your commitment to the community<sup>6</sup>

The recruitment of foster families for Native American children must conform to the requirements of the federal Indian Child Welfare Act (ICWA) and conforming OCFS regulation [18 NYCRR 431.18]. Since the passage of ICWA in 1978, many tribes/nations nationally have progressively built their own child welfare systems to handle child abuse and neglect concerns. The ICWA outlines foster placement preferences. Specifically, LDSSs and VAs, absent good cause, must seek placement with the extended family first. LDSSs and VAs need to be aware if the tribe or nation has established its own set of preferences as authorized by ICWA. For more information on ICWA, see [Chapter 4](#) of this guide.

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<sup>6</sup> North Carolina Family Support & Child Welfare Services Statewide Training Partnership. (2008). To learn more about resource family recruitment and retention, *Training Matters*, July 2008.

### 3. Customer service for prospective foster families

Good customer service is a major component in engaging prospective foster parents. In child welfare interactions, how people are treated at first point of contact sets the tone for how the relationship will move forward.<sup>7</sup> Timely responses to inquiries and questions are of critical importance. Best practice suggests that a response to an inquiry is made within 24 hours. The timely phone call demonstrates the importance of prospective foster parents to the LDSS or VA.

Prospective foster parents need to feel like they are a valued part of the team. The entire LDSS or VA should see the foster parent as a partner in raising a child that needs a home. All future contacts in the process should be timely and respectful. Retention starts with recruitment, so every piece of the process sets the tone for how the prospective foster parent and the agency will engage with one another.

For example, prospective foster parents are invited to attend an orientation or information session. Are there current foster parents at the session to answer questions and give advice? While it is not normally considered to be “customer service,” providing opportunities for prospective foster parents to interact with current foster parents sends a strong message that the agency values foster parents.

For more information about innovative strategies for recruiting and retaining foster homes, visit the OCFS Diligent Recruitment website at [www.recruit4fostercare.org](http://www.recruit4fostercare.org).

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<sup>7</sup> Geen, R., Malm, K., Katz, J. (2004). A study to inform the recruitment and retention of general applicant adoptive parents, *Adoption Quarterly*, 7(4).

## B. Supporting foster families

The responsibility of caseworkers involved in recruiting foster families extends beyond foster parents' certification or approval. It is essential to support foster families after children are placed in their homes.

Research has shown that up to 25% of foster families discontinue providing foster care each year, and it is estimated that 40% of these families failed to receive adequate support from their agencies.<sup>9</sup> These include activities such as organized peer support, timely responses to concerns, flexible respite care, and relevant training. For more information, see the OCFS publication [Revitalizing Recruitment](#), Chapter 6.

State regulations specify that agencies must provide specific information to foster parents when they receive their certification or approval to provide foster care and when a child is placed in the home.

### 1. When a child is placed in the home

The LDSS or VA must give the foster parent basic information about the child to be placed in the home. When a child is placed on an emergency basis, such information must be provided within 30 days of placement. This information should include:

- Estimated length of stay and the basis for this estimation
- Health of child, medical history and the procedure for obtaining consent to emergency medical treatment
- Current medications, allergies, and/or durable medical equipment
- Physical and/or behavioral problems
- Relationship of the child to his/her birth parents
- School and educational background
- Visitation plan, including location of visits
- Placement and discharge goals
- Notice of the foster board rate level (Normal, Special, or Exceptional), including a description of the child's condition or circumstance<sup>10</sup> [18 NYCRR 443.2(e)(3)]

The LDSS or VA must give the foster parent an appropriate form for maintaining a register for each child placed in the home. The register must include the name, date of birth, and religious faith of each child, the names and addresses of his/her parent or guardian or the address of the LDSS or VA which placed the child in the home, the dates of reception and

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<sup>9</sup> Annie E. Casey Foundation. (2012). [Building Successful Resource Families Practice Guide](#), Baltimore, MD: Author.

<sup>10</sup> OCFS. "Notification to Foster Parent" ([08-OCFS-ADM-03](#))

removal from the home, the persons who placed and removed the child, and other information as may be required [SSL §380;18 NYCRR 443.3(g)(1)].

The register and certificate or letter of approval shall be accessible for examination at all reasonable times by OCFS, and by the LDSS or VA that issued the certificate or letter of approval. Certificates, letters of approval, and registers are the property of the state and must be delivered upon demand to the issuing agency when the certificate or letter of approval is renewed, discontinued, or revoked [18 NYCRR 443.3(g)(2)].

Agencies also must provide foster parents with [18 NYCRR 443.3(i), (j) & (l)]:

- The agency's policies and procedures for removing children from foster homes
- The procedure for obtaining administrative review of any grievance or complaint about the agency's policies or practices
- A manual that summarizes all current agency policies and procedures that have some direct or indirect bearing on the role and responsibilities of foster parents

## 2. Conferences

Agencies must advise foster parents providing care for a child that regular conferences shall, whenever possible, be prearranged and held at a mutually convenient time in the foster boarding home at least every 90 days or at such shorter periods as may be required by OCFS regulation.

Agencies are also required to arrange non-routine conferences with foster parents regarding acute problems, emergencies, or crisis situations whenever necessary to provide services that are responsive to the problems and that protect the best interests of the child.

LDSS or VA workers must explain the purpose of each regular or emergency conference to the foster parent at the beginning of each conference and identify and discuss concerns of the foster family regarding the child in placement, and obtain an account of the child's placement, relationships, and functioning in the home, school, and community [18 NYCRR 443.3(h)].

## 3. Foster parents' rights

LDSSs and VAs must establish and maintain written procedures and practices for advising foster parents of their right:

- To be given preference and first consideration of their application to adopt a child who has been continuously in their care at least 12 months [SSL §383(3)].
- To intervene, as an interested party, in any court proceeding involving the custody of a child who has been in their care for 12 continuous months or longer [SSL §383(3)].
- To be given notice and an opportunity to be heard at all permanency hearings for any child in their care [FCA §§355.5, 741-a and 1089(b); 18 NYCRR 443.3(m)].

## 4. Training for foster parents

LDSSs and VAs must provide training to each certified or approved foster parent in a training program approved by OCFS that will prepare foster parents to meet the needs of children in their care so that the best interests of the children placed by the certifying or approving LDSS or VA will be met. Such training must include:

- Knowledge and skills relating to the reasonable and prudent parent standard, as defined in 18 NYCRR 441.25, for the participation of the child in foster care in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognition, emotional, physical, and behavioral capacities of a child
- Knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one day or more, and to decisions involving the signing of permission slips and arranging transportation for the child to and from extracurricular, enrichment, and social activities
- Information to help the foster parent to understand the issues confronting children preparing for another planned living arrangement with a permanency resource; and must, to the extent possible, be coordinated with a child's program to develop life skills for the purpose of preparing for another planned living arrangement with a permanency resource.
- Information on eligibility for the kinship guardianship assistance and the non-recurring guardianship expenses programs, and the medical coverage available to certain relative foster parents under the kinship guardianship assistance program [18 NYCRR 443.2(e)].

LDSSs and VAs should:

- Inform foster parents of all training opportunities that are available in their community on an ongoing basis. This will afford them the opportunity to enhance their knowledge on topics such as alcohol and substance abuse, developmental disabilities, and mental health issues.
- Invite foster parents to teleconferences sponsored by OCFS.
- Look to other agencies and community supports to offer trainings for foster parents.
- Offer as many ways as possible to involve foster parents in their own professional development.
- Consider using foster parents as co-trainers at pre-service and in-service trainings.
- Allow time at the end of training sessions for discussion so that foster parents can apply the training to their own situations and leave with a plan of action.

- Consistently obtain feedback from foster parents on your training program.
- Examine the degree to which foster care caseworkers and supervisors have the same understanding as foster parents as it pertains to the role and responsibilities of foster parents. Having caseworkers and supervisors attend the same training as foster parents may strengthen this mutual understanding.
- Conduct a similar assessment of the understanding of foster parenting roles, responsibilities and performance needs and expectations with other district/agency staff outside the foster care unit and provide training as needed.<sup>11</sup>

#### ***a. Resources for training***

Training in topics such as communication, parenting, and stress management can be useful to foster parents. Most LDSSs and VAs are able to use local community experts for in-service training. LDSSs and VAs may offer in-service training sessions for foster parents, arranged or conducted by staff, with guest speakers from community hospitals, schools, and local police or fire departments. For example:

- Agency staff conducts a brief overview on permanency
- Child Protective Services supervisors review reporting procedures, the investigation process, rights of the subject and child, and standards of proof
- A Family Court Judge summarizes the Family Court process
- The local fire department provides home safety training
- The local police department conducts a session on home safety or avoiding cybercrime

Health education programs for foster parents can be provided by local health professionals and cover topics such as:

- Childhood health requirements (e.g., immunization schedule)
- Common health problems and dealing with emergencies
- Proper administration of medication and taking of a child's temperature; general infant, child, and adolescent health care issues
- Family planning and sex education
- Information on common chronic diseases (asthma, sickle cell anemia, diabetes, etc.)
- HIV/AIDS education, infection control, and universal precautions
- Nutrition and physical fitness

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<sup>11</sup> OCFS. "Supporting the Needs of Foster Parents" ([05-OCFS-INF-03](#))

### ***b. Courses available from OCFS***

The OCFS Bureau of Training and Development has published a catalog of courses that are available to those involved in the child welfare system in New York State (<http://ocfs.ny.gov/ohrd/BTD%20Contracted%20Course%20Catalog.pdf>). Caseworkers should contact their agency training coordinator for information on how to schedule training sessions for foster and adoptive parents.

Online training for foster parents is also available, and can be a viable choice for foster parents who may find it difficult to travel to in-person training. Courses are offered at no charge through the iLinc system; usually offered September through December and April through June (<https://www.hslcnys.org/fosterparenttraining>).



#### ***Practice Tip: When a child leaves a foster home***

Foster parents may experience loss and grief when children are removed from their care. There are several ways agencies can help foster parents through fear of loss, loss itself, and the grieving process.

*Communicate:* First, the social worker should be as direct and honest as possible with the foster parents regarding the duration of the placement. It is important that they participate in the decision-making process.

*Be available:* When a child leaves a foster home, the child's caseworker is usually focused on helping the child and his/her family adjust to one another. When the caseworker who recruited the foster family has maintained a relationship with the family, he/she should be available to provide emotional support.

*Provide education:* Foster parents can benefit from educational programs and training related to loss and the grieving process. This kind of training can help foster parents to understand their own reactions to loss as well as those of the children they are caring for.

*Refer to a peer support group:* Although complicated grief reactions need the expertise and skill of a professional, the empathy of a self-help group can assist with a normal grief reaction.

Adapted from Adoptive and Foster Family Coalition, "[Helping Foster Parents Grieve](#)"

## Chapter 9: Residential Care Facilities

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## Chapter 9

# Residential Care Facilities

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Although most foster care placements are made into foster boarding homes or approved relative foster homes, the service needs of some children require placement in a residential facility for children. The most appropriate level of placement for each child will always be the least restrictive and most homelike setting in which the child can be maintained safely and receive all services specified in the child's service plan [18 NYCRR 430.11(d)].

According to recent figures, 59% of the children in foster care in New York State were in non-relative foster boarding homes, 22% were in approved relative foster homes, and 17% were in congregate care, which includes agency boarding homes, group homes, group residences, and institutions (or residential treatment centers). The remaining 2% of children in foster care resided in Supervised Independent Living Programs (SILPs) or other settings. More than 90% of the children in congregate care were 11 years of age or older.<sup>1</sup>

Nationwide, research indicates that children in congregate care typically have a different set of clinical needs and treatment needs than children placed in other types of foster care settings. Children in congregate care settings are almost three times as likely to have a diagnosed mental disorder, compared to children in other settings (36% and 13%, respectively). They also are more than six times more likely than children in other settings to have a “child behavior problem” as a reason for removal from home (45%, compared to 7%).<sup>2</sup>

Federal law and OCFS regulations mandate that each child's case plan must include a discussion of how the child's case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification. Case plans must also address how the placement is consistent with the best interests and special needs of the child [42 U.S.C. 675(5)(A)].

The OCFS regulatory standard for the appropriate level of placement is that the most appropriate level of placement for each child will always be the least restrictive and most home like setting in which the child can be maintained safely and receive all services specified in the child's service plan [18 NYCRR 430.11(d)].

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<sup>1</sup> OCFS Monitoring and Analysis Profiles (2015)

<sup>2</sup> U.S. Department of Health and Human Services (2014). “A National Look at the Use of Congregate Care in Child Welfare.” Administration for Children & Families, Children's Bureau. Accessed at [https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare\\_brief.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf)

## A. Appropriateness of placement

Although there is an appropriate role for congregate care placements in the continuum of foster care settings, there is consensus across multiple stakeholders that most children and youth, but especially young children, are best served in a family setting. Stays in congregate care should be based on the specialized behavioral and mental health needs or clinical disabilities of children. It should be used only for as long as is needed to stabilize the child or youth so they can return to a family-like setting.<sup>1</sup>

A child in placement must be placed in the least restrictive setting appropriate to the child's needs [18 NYCRR 430.11(d)(1)]. Facility types, from most restrictive to least restrictive, are:

- Institution (sometimes referred to as a Residential Treatment Center)
- Group Home/Group Residence
- Agency Boarding Home
- Certified Foster Home, Approved Relative Foster Home, Concurrently Certified/Approved Foster/Adoptive Home

Whenever a child is placed at a level other than a foster family boarding home or agency boarding home, the caseworker must show that this level of placement is necessary and appropriate to meet the child's needs [18 NYCRR 430.11(d)(3)(ii)]. This must be recorded within 30 days of the placement or change in placement on the most appropriate document (i.e., the next FASP, Plan Amendment, or Removal Update if a Plan Amendment is not available, and the FASP has already been launched, yet is unable to be approved within 30 days).<sup>2</sup>

When placement in a residential care facility is deemed necessary, a child should be placed as close as possible to his/her family, as long as it is not contrary to the child's safety or well-being. For a child placed at considerable distance from his/her family, caseworkers must document why this placement is in the child's best interests [18 NYCRR 430.11(c)].

See [Chapter 4](#) of this guide for more information on standards for appropriate placement in various foster care settings.

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<sup>1</sup> Ibid.

<sup>2</sup> OCFS. *Family Assessment and Practice Guide*, "[Module 8: Foster Care Issues](#)."

## B. Types of residential facilities

A few local social services districts (LDSSs) operate a limited number of residential facilities for children, but the vast majority of such facilities are operated by voluntary agencies (VAs). LDSSs generally have contracts with one or more VAs that operate residential facilities so that a child may be placed in a residential facility when necessary.

### 1. Agency boarding homes

These are family-type homes operated by LDSSs or VAs that provide care for not more than six children. The living quarters are owned, leased or otherwise under the control of the agency. An agency boarding home may provide care for more than six children if they are siblings from the same family [SSL §371(16); 18 NYCRR 441.2(i)].

#### *a. Supervised Independent Living Program (SILP)*

A supervised independent living program is an agency boarding home that is certified by an authorized agency to provide a transitional experience for older youth who, based on their circumstances, are appropriate for the level of care and supervision provided by the program [18 NYCRR 441.2(m) and 449.1(d)]. A SILP is a home or apartment that care for up to four youth, including their children [18 NYCRR 449.1(e)].

### 2. Group homes and group residences

Group homes provide care for not fewer than seven, but no more than 12 children who are at least five years of age. Younger children may be cared for in a group home if their siblings or mother have been placed in the same facility [SSL §371(17); 18 NYCRR 441.2(h)]. Group residences, a sub-category of institution, provide care for 13 to 25 children [18 NYCRR 441.2(g)].

According to OCFS regulation [18 NYCRR 430.11(d)(3)], the placement of a child in a group home or group residence shall be considered appropriate only when:

- The child is 10 years of age or older and the necessity of the child's placement is based, in whole or in part, on his/her service needs [18 NYCRR 430.10(c)(5)] or pregnancy, and
- The services or supervision needed by the child cannot currently be provided in a foster boarding home

The child's case record form must document the necessity of placement, specifying the services needed by the child that cannot be provided in a family foster home or agency boarding home.

Other reasons for appropriate placement of a child in a group home or group residence include:

1. One or more previous placements in family foster homes or agency boarding homes were terminated because the child refused to stay in the home or the foster parent refused to care for the child because of the child's behavior. In this event, the child's

- case record must contain a description of the previous placements and the reasons for their terminations [18 NYCRR 430.11(d)(3)(iii)].
2. The placement allows a child to reside with his/her mother and/or siblings. The case record must show that the child or his mother requires foster care due to pregnancy, or that one or more of the child's siblings requires care in a group home or group residence and it is in the best interests of the child to live with his/her siblings [18 NYCRR 430.11(d)(3)(iv)].
  3. The child has been a victim of incest, as documented in the child's case record [18 NYCRR 430.11(d)(3)(v)].
  4. The child's parents resist placement of the child in a foster family home or agency boarding home, and the group home or residence will provide better access to the child's parents. In this case, the child's permanency planning goal must be discharge to parents, and the OCFS commissioner or the OCFS commissioner's representative must approve the placement [18 NYCRR 430.11(d)(3)(vi)].

### 3. Institutions

Institutions are facilities for the care and maintenance of 13 or more children, and are operated by a LDSS or VA [18 NYCRR 441.2(f)]. The placement of a child in an institution (other than a group residence) is considered to be an appropriate placement only if the child is 12 years of age or older and:

- The necessity of the child's placement is based, in whole or in part, on his/her service needs;
- A determination has been made that the services or a level of supervision needed by the child cannot currently be provided in any other level of care; and
- Needed services can be provided in the institution in which the child is placed [18 NYCRR 430.11(d)(4)(i)].

The child's case record must show the age of the child and contain adequate documentation of the necessity of placement, the types of services or level of supervision needed by the child that cannot currently be provided in any other level of care, and efforts to obtain necessary services or supervision in a less restrictive level of care [18 NYCRR 430.11(d)(4)(ii)].

### 4. Other types of congregate care

#### *a. Group emergency foster care programs*

New York State also approves group emergency foster care programs, which are operated by VAs in agency boarding homes, group homes, or in portions of institutions that are physically and programmatically distinct from other types of foster care programs operated by the agency [18 NYCRR 451.2(c)].

According to OCFS regulations, designated group emergency foster care programs must accept eligible clients 24 hours a day, 365 days a year. In order to be eligible for group emergency foster care, a child must be:

- Referred by a LDSS for temporary care
- In a situation requiring immediate care
- A child for whom no other immediate and appropriate foster care placement is available

Designated group emergency foster care programs must accept any eligible client up to their designated capacity, except where the acceptance of the child would violate intake criteria established by the program and approved by the appropriate LDSS. The group emergency foster care program must determine the child's diagnostic needs on the basis of information provided by the LDSS. If the child has received a diagnostic evaluation within the previous year, the program is not required to perform a diagnostic evaluation [18 NYCRR 451.5(a)(4)].

If a child does not have a current diagnostic evaluation, the group emergency foster care program must conduct an evaluation of the child's needs, including a child and family assessment, psychological or psychiatric and medical evaluations, and an assessment of educational placement needs [18 NYCRR 451.5(a)].

#### ***b. Limited secure facilities***

Some residential care facilities are also approved by OCFS as limited secure facilities. These are institutions, group residences, group homes, or agency boarding homes that have been approved by OCFS to provide residential care and treatment to youth adjudicated as juvenile delinquents. Under the state's "Close to Home" initiative, such youth may be placed with the LDSS commissioner when the Family Court has determined that a secure placement is not required [18 NYCRR 450.2(b)].

Cities with populations in excess of one million may establish such initiatives [SSL §404(1)]. Currently, these facilities exist only for youth placed as juvenile delinquents under Article 3 of the FCA with the New York City Administration for Children's Services.

#### ***c. Facilities operated by OMH or OPWDD***

Children in foster care may be placed in facilities operated or supervised by the New York State Office of Mental Health (OMH) or the New York State Office for People with Developmental Disabilities (OPWDD) when the children require services from facilities operated or licensed by OMH or OPWDD. The LDSS retains responsibility for the care and custody or custody and guardianship of children in foster care while they are living in these facilities [18 NYCRR 431.17(a)].

## C. Conditions in residential care facilities

LDSSs or VAs must obtain operating certificates to operate residential care facilities. State regulations define the conditions that must be met by agencies in order for them to become certified and continue to be certified.

OCFS regulations set forth requirements for care of children, and provision of health and medical services. Residential facilities for children are also subject to the regulations applicable to all programs that provide care for foster children (including foster boarding homes). These regulations address a variety of topics, including services to children, education, work experiences, the reasonable and prudent parent standard, use of discipline, appropriate custodial conduct, use of restraints, and the privacy rights of children in foster care, as well as requirements that programs have policies and that they maintain records on children in their care [[18 NYCRR Part 441](#)].

### 1. Staffing requirements

All types of residential care facilities are required to establish and follow procedures for obtaining background information on individuals who have or who will have the potential for regular and substantial contact with children in care. This requirement covers individuals who are employees, volunteers, or consultants of the agency. It also may include people who work for individuals, corporations, partnerships, or associations that provide goods and services to the facility if they will have regular and substantial contact with children in care. This process must include:

- A check of the Register of Substantiated Category One Cases of Abuse or Neglect (Staff Exclusion List or SEL) maintained by the Justice Center of all applicants for employment and volunteer positions and contractors and consultants [[SSL §495](#); [18 NYCRR 442.18\(e\)](#), [447.2\(e\)](#) and [448.3\(c\)](#)].
- If an applicant is not on the SEL, the agency must submit a request to OCFS to determine whether the person is the subject of an indicated report of child abuse or maltreatment on file with the SCR in accordance with [SSL §424-a](#) [[18 NYCRR 442.18\(e\)\(3\)\(ii\)](#), [447.2\(e\)\(2\)](#) and [448.3\(c\)\(2\)\(ii\)](#)]
- A criminal history background check, including fingerprinting, of each applicant for employment or volunteer positions [[SSL §378-a\(1\)](#); [18 NYCRR 442.18\(e\)\(3\)\(iii\)](#), [447.2\(e\)\(3\)](#) and [448.3\(c\)\(2\)\(iii\)](#)]
- The submission of a sworn statement by all applicants for employment, volunteers, or consultants as to whether they have been convicted of a crime in any jurisdiction [[18 NYCRR 442.18\(e\)\(1\)\(i\)\(d\)](#), [447.2\(a\)\(2\)\(iv\)](#) and [448.3\(b\)\(5\)\(i\)\(d\)](#)]

#### **a. Agency boarding homes**

To operate an agency boarding home, the agency must:

- Employ a professionally trained social worker, a person with experience in child welfare, or a person holding a master's degree in a related field to supervise the agency boarding home
- Establish a procedure to obtain background and other information on each applicant for employment or to be a volunteer or consultant and to evaluate each such applicant as to his/her personal, employment and experience qualifications [18 NYCRR 447.1]

### ***b. Group homes***

A group home must employ a professionally trained social worker, a person with experience in child welfare, or a person holding a master's degree in a related field to supervise the group home program. The determination as to the children to be placed in each group home shall be made by this person or by an interdisciplinary team, when it is the general practice of the agency to use such services.

The agency must establish a procedure to obtain background and other information related to the personal, employment, and experiential qualifications of each person who applies to work or volunteer at the group home [18 NYCRR 448.2].

Persons caring for children must be sufficient in number to provide adequate supervision for the children under care. Employees must have good moral character, and must have an interest in and an ability to care for children. The following minimum child-care staff-to-children ratios must be in effect during waking hours when children are in the home or residence:

- A group home serving nine or fewer children must be staffed by at least one child-care worker
- A group home serving 10 to 12 children must be staffed by at least two child-care workers
- A facility caring for mothers and their children must provide one staff member to care for every four infants under two years of age when the mothers are out of the home [18 NYCRR 448.3(b)].

### ***c. Institutions***

Institutions must employ at least one social worker for every 20 children in care [18 NYCRR 442(d)]. In addition, during waking hours when children are under the care of child care staff, there must be a sufficient number of child care workers to provide supervision appropriate to the needs of the children in care. At a minimum, units serving nine or fewer children must be staffed by at least one child care worker and units of 10 to 19 children must be staffed by at least two child care workers.

When deployment of child care staff within a unit requires that a child care worker be responsible for the supervision of 10 or more children the agency must implement a plan of supervision that may include the identification of qualified backup staff for day, evening, and weekend periods. The plan must be provided to each child care worker [18 NYCRR 442(d)(4)(i)].

Each new employee must undergo a physical examination that includes a tuberculin test. An annual exam is required for all employees who handle food or who are in direct contact with children [18 NYCRR 442.18(e)(2)].

## 2. Staff training

Each institution and group home must establish a plan for staff orientation and continuing education through in-service training [18 NYCRR 442.18(e)(5) and 18 NYCRR 448.3(c)(5)].

OCFS regulations require that certain staff in residential care facilities receive training in the following areas which includes, but not limited to:

### ***a. Care of HIV-infected children***

Staff members who are responsible for the care of children infected with the human immunodeficiency virus (HIV) and for maintaining the records for such children must receive annual training related to:

- Confidentiality of HIV information,
- The agency's written management plan for maintaining security of records,
- Information on factors that constitute significant risk of contracting or transmitting HIV infection,
- Measures recommended for the protection of persons caring for HIV-infected children,
- Measures recommended for protecting HIV-infected children from unnecessary exposure to additional infections, and
- The research evidence that HIV is not transmitted by casual contact or in the usual family care of children [18 NYCRR 431.7(c)].

Additional training must be provided to designated agency staff who are responsible for conducting assessments of individual children for risk factors for HIV and AIDS [18 NYCRR 441.22(b)(3)].

### ***b. CPR and first aid***

The institution must have at least one person on duty at each site at all times who is certified by the American Red Cross as trained in first aid. All child care staff who are predominantly engaged in recreational activities must be certified by the American Red Cross as trained in first aid. All nursing must be trained in first aid and cardiopulmonary resuscitation techniques [18 NYCRR 442.21(i)(1) and (2)].

### ***c. Maintaining competency for custodians of people with special needs***

As part of the Justice Center-issued code of conduct for employees, volunteers, or consultants, these individuals must participate available, appropriate training designed to maintain their competency and skill level, and to model and shape the behavior of their co-workers [18 NYCRR 433.4(b)(3)].

***d. Use of restraints***

All staff involved in the use of restraint must complete at least six hours of training in the agency's policy concerning:

- Preventive methods and procedures for situations which might lead to the use of restraint;
- Appropriate alternatives to restraint;
- The circumstances when restraint might be necessary; and
- Methods of applying restraint and the rules which must be observed in so doing [18 NYCRR 441.17(h)(1)].

***e. Reasonable and prudent parent standard***

Designated staff members who are authorized to apply the reasonable and prudent parent standard to decisions involving the participation of children in age or developmentally-appropriate activities must be given training in how to use and apply the reasonable and prudent parent standard [18 NYCRR 441.25(c)].

**3. Physical facilities**

Residential care facilities certified by OCFS to operate in New York State must comply with safety standards related to fire safety, storage of dangerous materials, and rooms that are used for sleeping.

Requirements for group homes are specified in 18 NYCRR Part 448, and those for institutions can be found in 18 NYCRR Part 442. Rules for agency boarding homes are provided in 18 NYCRR Part 447. Rules applicable to all programs providing care for children in foster care are provided in 18 NYCRR Part 441.

## D. Safety and well-being of children in residential care

OCFS is committed to enhancing the ability of residential programs to provide high quality programming and supervision for children and youth to address their safety, developmental, and treatment needs. Policies have focused on assisting agencies in efforts to reduce the number of high-risk interventions, such as restraint.

The roadmap developed by the Child Welfare League of America (CWLA) assists agencies in reducing the numbers of high-risk interventions. CWLA presented its findings in an issue brief entitled: [Reducing the Use of Restraint and Seclusion; Promising Practices and Successful Strategies](#). It outlines six themes leading to improved safety in residential care settings (see box).



### *Practice Tip: Six Themes for Safety Improvement*

#### 1. Leadership

Supportive leadership is one of the most critical components in aiding the elimination of unnecessary incidents of restraint.

#### 2. Organizational culture

An organizational culture must be developed that emphasizes the needs of the client and in which staff members, families, and youth are actively involved in every aspect of treatment and care.

#### 3. Agency policies, procedures, and practices

Policies and procedures must clearly define what constitutes dangerous behavior and what emergency situations may require physical intervention.

#### 4. Staff training and professional development

Resources must be made available to enable staff members to master prevention and de-escalation techniques, provide culturally sensitive care, incorporate trauma awareness into the continuum of the care, and emphasize teamwork and partnership.

#### 5. Treatment milieu

A successful treatment milieu incorporates trauma-informed knowledge; provides a predictable, structured routine; and supports the concept of self-management by children and youth.

#### 6. Continuous quality improvement

Agencies should establish processes for monitoring performance, reviewing policies and procedures, evaluating services, documenting and examining outcomes, and using the results to continuously improve practice.

For more detailed information, see “Safety and Well-Being of Children in Congregate Care” ([05-OCFS-INF-01](#)).

## 1. Discipline

Each child care agency and facility operated by such agency is required to maintain, and keep current and available, a manual or manuals which clearly state its policies related to discipline and restraint, appropriate custodial conduct, children's rights, room isolation, and safety [18 NYCRR 441.4].

State regulations describe several disciplinary methods that are prohibited for children and youth in foster care:

- Deprivation of meals, snacks, mail, or family visits
- Room isolation
- Corporal punishment
- Solitary confinement

Discipline must be prescribed, administered, and supervised only by adults. Such responsibilities must never be delegated to children [18 NYCRR 441.9].

### **a. Room isolation**

New York State regulations allow institutions to use room isolation (also known as “seclusion”) under certain circumstances. Room isolation is defined as “confinement of a child in a room specifically designed and designated for such use in order to control acute physical behavior of that child [18 NYCRR 441.17(a)(6)].” Room isolation is not permitted in any other type of foster care setting.

The circumstances under which room isolation may or may not be used in an institutional setting include:

- A child who is seriously depressed, has an intellectual disability, or has a seizure disorder must never be placed in room isolation [18 NYCRR 442.2(b)]



### **Practice Tip:** *Goal of discipline*

The long-standing goal of discipline regulations has been to protect children in agency care from harmful punishment, abuse, maltreatment, and improper supervision. The discipline regulations are founded on these principles:

- Discipline is an integral part of the education and socialization of every child.
- Normal growth of a child and the development of a strong self-concept is not possible without effective discipline. A strong self-concept is a feeling of self-worth and self-identity that is realistic rather than distorted by feelings of personal inadequacy, irrational anger, or guilt.
- Harsh and severe punishments are ineffective methods of discipline, impede the development of a strong self-concept, and increase the social distance between caretaking adults and children.
- The nature of each child’s disciplinary experience profoundly influences the development of personality and the formation of character.
- The quality of disciplinary practices often determines the stability, order, and health of a family or group.
- Adults responsible for the discipline of children should understand each child’s need for respect, dignity, security, positive role models, and satisfying relationships with peers and adults, especially those who are perceived as the controlling authority in their lives.

Source: “The Discipline of Children in Foster Care” ([88-OCFS-ADM-07](#))

- Room isolation is authorized only by a director of an institution or a designee who reviews the need for continuing the isolation every hour. Unless shown to be necessary, room isolation cannot last for more than two hours [18 NYCRR 442.2(c)]
- The approval of the director of the institution must be obtained if a child is in room isolation for more than two hours in any 24-hour period, or is returned to room two or more times within a seven-day period. Staff involved must discuss with their supervisors the events leading to the use of the isolation room, the reasons the isolation period was prolonged or used frequently, and the child's reaction to the use of isolation. A summary of this discussion must be recorded and kept in the child's case record [18 NYCRR 442.2(d)]
- Staff must make every effort to return the child to the regular program of care as quickly as possible [18 NYCRR 442.2(e)]
- While the child is in the isolation room, he/she must be accompanied by a staff member(s) trained in the use of restraint for the duration of the isolation period unless the agency's restraint policy specifies otherwise. Alternatively, the institution may obtain OCFS approval through the agency's restraint policy for regular visits by staff and continuous visual observation of the child [18 NYCRR 442.2(f)]
- Children in room isolation must have access to bathroom and toilet facilities, and must receive regular meals [18 NYCRR 442.2(g)]
- The isolation room must be heated, lighted and ventilated; have an unbreakable observation window; no exposed electrical outlets; and no furniture other than a fireproof, rubberized mattress [18 NYCRR 442.2(h)].
- The room must be unlocked, unless OCFS approves an exception to this rule [18 NYCRR 442.2(i)]

### ***b. Restraint***

The use of restraint is allowed in limited circumstances in congregate foster care settings. OCFS regulations define "restraint" as the containment of acute physical behavior by physical, mechanical, or pharmacological intervention, or room isolation [18 NYCRR 441.17(a)(1)]. "Acute physical behavior" is defined as behavior that clearly indicates the intent to inflict physical injury on oneself or others or to otherwise jeopardize the safety of any person [18 NYCRR 441.17(a)(2)].

Restraint does not mean time out. "Time out" is defined as the removal of a child from a situation that is too threatening or emotionally overwhelming for the child or where the child may lead other children into an uncontrollable state or where the child has exceeded the reasonable limits set by the staff [18 NYCRR 441.17(a)(7)]. Restraint also does not mean confinement of a child to his or her own room for treatment or disciplinary reasons.

Restraint must be used without purposely inflicting pain or harm, and only when other forms of intervention are either inappropriate or have been tried and proved unsuccessful. Restraint, including room isolation, can never be used for punishment or for the convenience of staff. An authorized agency cannot use any method of restraint unless it has submitted its restraint policy to OCFS and such policy has been approved in writing by OCFS [18 NYCRR 441.17(b) & (c)].



### **Practice Tip: Benefits of Trauma-Informed Care**

Many young people who are placed in residential settings have already experienced various forms of emotional and physical trauma. Common practices, such as seclusion and restraint, put young people at risk of re-traumatization, development of comorbid psychopathology, injury, and even death.

OCFS encourages models of residential care that focus on enhancing skills for self-regulation and control.

Trauma Informed Care (TIC) has been identified as a mechanism to move residential care to a more collaborative, therapeutic, and relationship-driven modality. TIC is organizational change strategy that aligns service delivery with responsive and non-coercive staff-client interactions. New York is committed to the continued expansion of trauma informed practice as a means to reduce and prevent abuse or maltreatment, as well as to reduce physical restraints in residential foster care settings.

Source: “Child and Family Services Review: Safety,” accessed at <http://ocfs.ny.gov/main/cfsr/safety.asp>

**OCFS VIDEO: [Trauma-Informed Care](#)**

## **2. Normative experiences for children in congregate care**

Federal law [42 USC 671 and 675] and OCFS regulation [18 NYCRR 441.25] require supporting normative experiences for children through the implementation of the reasonable and prudent parent standard. In the context of congregate care, a designated and duly trained employee of a child care facility can make parental decisions that maintain the health, safety, and best interests of the child, as well as decisions about the child’s participation in extracurricular, enrichment, cultural, and social activities that are age and developmentally appropriate.<sup>1</sup>

Normative experiences are opportunities that promote the healthy cognitive, social, emotional, physical, and educational development of children, youth, and young adults, regardless of their involvement in the child welfare system.

### **a. Reasonable and prudent parent standard**

OCFS regulations provide the following definitions derived from the federal Preventing Sex Trafficking and Strengthening Families Act (2014).

<sup>1</sup> OCFS. “Supporting Normative Experiences for Children, Youth and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard” ([15-OCFS-ADM-21](#))

The “reasonable and prudent parent standard” (RPPS) is used by a caregiver in making careful and sensible decisions that both maintain the health, safety, and best interests of a child in foster care and encourage the emotional and developmental growth of the child. These decisions are made about whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities [18 NYCRR 441.25(a)(1)]. In residential care, a “caregiver” is a designated employee of an institution, group residence, group home, agency boarding home, or supervised independent living program in which the child has been placed [18 NYCRR 441.25(a)(2)].

The RPPS must be applied by the LDSS or VA that is caring for the child in a child care facility, including an institution, group residence, group home, agency boarding home or supervised independent living program [18 NYCRR 441.25(b)].

In congregate care settings, opportunities to participate in normative experiences may be more restricted, based on the needs and functional capacity of the child. Each child care facility must have present on-site at least one employee who is designated to be the caregiver and who is authorized to apply the RPPS [18 NYCRR 441.25(c)]. In order to fully implement the standard, it is recommended that an agency assign at least one employee per shift in each facility to serve in this capacity. This person must be trained on how to use and apply the RPPS, and the training must be approved and issued by OCFS.<sup>2</sup>

Staff should engage, if possible and appropriate, the child’s birth/adoptive parent(s), guardian(s), previous caretaker(s), and the child (if developmentally appropriate) in decision-making. However, the caseworker/case manager and the child ultimately determine the decision that is in the best interests of the child or youth. The decision and the basis for it must be recorded in the child’s case record.<sup>3</sup>

State law provides that a caregiver will not be held liable for injuries incurred by a child as a result of participation in age or developmentally appropriate activities where the caregiver’s decision to allow such participation was made in conformance with the RPPS and that the caregiver had been trained in the RPPS in accordance with federal law and OCFS regulation [SSL §383-a]. In such cases where the caregiver may apply the immunity protection, a LDSS or VA also may benefit from the immunity protection.

See [Appendix 9-A](#), “Applying the Reasonable and Prudent Parent Standard: Caregiver Considerations.”

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<sup>2</sup> OCFS. “Immunity From Liability When Applying the Reasonable and Prudent Parent Standard” ([17-OCFS-ADM-01](#))

<sup>3</sup> OCFS. “Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard” ([15-OCFS-ADM-21](#)).

## E. Justice Center

The Justice Center for the Protection of People with Special Needs (Justice Center) serves both as a law enforcement agency and as an advocate for vulnerable people with special needs. A “vulnerable person” is a person who, due to physical or cognitive disabilities or the need for services or placement, is receiving care from a facility or provider within the systems overseen by state agencies [[Executive Law §550\(5\)](#)].

The Justice Center is required to perform these activities to protect vulnerable persons:

- Operate a hotline to receive reports of alleged abuse, neglect, and significant incidents involving vulnerable persons in certain residential facilities and programs
- Develop a register capable of receiving and recording reports of reportable incidents involving vulnerable persons. This register is known as the Vulnerable Persons’ Central Register (VPCR), and “reportable incidents” include allegations of abuse, neglect and significant incidents
- Develop a code of conduct for workers who have regular contact with vulnerable persons
- Maintain overall responsibility for the investigation of reports alleging abuse, neglect, or a significant incident involving a vulnerable person(s) [[SSL §492\(1\)](#); [Executive Law §§552 and 553](#)]

The establishment of the Justice Center investigates reports related to residential programs certified by OCFS, as well as other types of programs operated or certified by OCFS, including runaway and homeless youth programs, family type homes for adults, detention programs, juvenile justice programs, institutions, group residences, group homes, and agency-operated boarding homes including supervised independent living programs.<sup>1</sup> The law includes these programs within the term “facility or provider agency” [[SSL §488\(4\)](#)].

An LDSS also would be involved in an investigation when it has a contract with an authorized agency for detention services or for care of foster children in an out-of-state facility.

### 1. Vulnerable Persons’ Central Register (VPCR)

The Justice Center operates the Vulnerable Persons’ Central Register (VPCR) to receive reports of reportable incidents, which include allegations of abuse or neglect, and significant incidents. The person named in the report is an individual who, due to physical or cognitive disabilities, or the need for services or placement, is receiving services from a facility or provider agency. Any concerns regarding abuse or neglect of, or a significant incident involving, a child in residential care must be reported to the VPCR, which:

1. Receives reports of allegations of reportable incidents involving persons receiving services in facilities or from provider agencies

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<sup>1</sup> OCFS. “Protection of People With Special Needs Act and the Formation of the Justice Center and the Vulnerable Persons Central Register” ([13-OCFS-INF-05](#))

2. As warranted, refers reports alleging crimes to appropriate law enforcement authorities
3. Notifies appropriate persons and officials of received and accepted reports; and
4. Maintains an electronic database of each report and the finding associated with each report [SSL §492(1)].

## 2. Mandated reporters

For Justice Center activities, state law defines a “custodian” as a director, operator, employee, or volunteer of a facility or provider agency. This term also applies to a consultant, and to an employee or volunteer of a corporation, partnership, organization, or governmental entity that provides goods or services to the facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or program.

Mandated reporters are required to report to the VPCR if they have reasonable cause to suspect that a vulnerable person has been subjected to a reportable incident. As defined by state law, mandated reporters are custodians and human service professionals [SSL §488(5) and (5)(a)]. See [Appendix 9-A](#) for a list of mandated reporters.

## 3. Reportable incidents

Mandated reporters are required to report to the VPCR if they have reason to believe one of the following incidents have occurred [SSL §491]:

- Physical abuse
- Sexual abuse
- Psychological abuse
- Deliberate inappropriate use of restraints
- Use of aversive conditioning
- Obstruction of reports of reportable incidents
- Unlawful use or administration of a controlled substance
- Neglect, including but not limited to:
  - Failure to provide proper supervision
  - Failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, or
  - Failure to provide access to educational instruction

Mandated reporters also are required to report a significant incident. This is an incident other than one of abuse or neglect that may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services, and which includes, but is not limited to:

- Conduct between persons receiving services that would constitute abuse or neglect if committed by a custodian, or
- Conduct on the part of a custodian that is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services

See [Appendix 9-B](#) for a complete description of reportable incidents as defined in New York State law.

When any allegation that could reasonably constitute a reportable incident is received by the VPCR, the register must accept and immediately transmit notice of the report orally or electronically to the appropriate state oversight agency and, as appropriate, to the director or operator of that facility or provider agency [[SSL §492\(3\)\(a\)](#)].

Whenever the VPCR receives a telephone call or electronic transmission that alleges an act or circumstances that may constitute a criminal offense or an immediate threat to a vulnerable person's health, safety, or welfare, the register must convey the information contained in such call or transmission to the appropriate law enforcement agency or district attorney and, to the extent necessary, the appropriate emergency responder, and the state oversight agency [[SSL §492\(3\)\(b\)](#)].

#### 4. Justice Center Code of Conduct

The Protection of People with Special Needs Act, which established the Justice Center, requires that a Code of Conduct be read and signed by any custodian who will have regular and direct contact with people with special needs covered by the act. The Code of Conduct must be read and signed when the custodian is hired, and at least annually thereafter [[Executive Law §554](#)].<sup>2</sup>

The [Code of Conduct](#) is available on the Justice Center website.

#### 5. Justice Center investigation protocols

The Justice Center has developed "[Justice Center Protocols for Interviewing People who Receive Services](#)," which must be used with vulnerable persons who are alleged victims named in a report to the Justice Center, or who may have information pertinent to the investigation of such a report.

These protocols are applicable to all investigations of abuse or neglect of vulnerable persons in residential programs and facilities operated, licensed, or certified by OCFS, excluding foster family homes and residential programs for victims of domestic violence. Service providers must adhere to the protocols whenever there is an investigation of a report to the VPCR.

<sup>2</sup> OCFS (2016). "Amended Code of Conduct from Justice Center for Protection of People with Special Needs," [16-OCFS-ADM-11](#).

The service provider must notify the service recipient that a report has been made to the Justice Center. A service recipient is the person who resides in a facility or who receives services from a facility or provider agency and is either the alleged victim or a potential witness of the incident.

The service provider also must notify the service recipient's personal representative, who is the person authorized under state, tribal, military, or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs serving children under the jurisdiction of OCFS, the service recipient's parent, guardian, or other person legally responsible for the child.

The protocols also address interviewing service recipients with consideration to protecting the health, safety, and well-being of service recipients and maintaining the integrity of investigations of abuse and neglect. For more detailed information, see "Required Notifications for Abuse and Neglect Reports from the Justice Center" ([15-OCFS-ADM-08](#)).

## F. Revoking, suspending, or limiting facility certificate

After an inspection or investigation, OCFS may decide that the operating certificate of a residential care facility should be revoked, suspended, modified, or limited. *Revocation* means that the operating certificate of the facility will be terminated, but the termination does not take effect immediately. *Suspension* means that the operating certificate is terminated immediately. *Modification* or limitation means that the operating certificate remains in place, but at least one of the terms of the operating certificate is changed.

The agency that operates the facility has the right to a hearing to review the decision. When the agency requests a hearing, OCFS must extend the duration of an operating certificate until the hearing decision is issued, the hearing request is withdrawn, or the agency defaults the hearing [18 NYCRR 343.2].

If, however, it has been determined that a residential care facility is operating in a way that places the health, safety, or welfare of the public or an individual in imminent danger, the certificate may be temporarily suspended or limited by OCFS without a hearing for not more than 30 days [18 NYCRR 343.2]. OCFS also may order the agency to discontinue a dangerous condition or activity immediately or within a specified period of less than 30 days. In these cases, the agency must respond to the allegations within 10 days [18 NYCRR 343.5].

When a facility's operating certificate is being revoked, modified or limited, the LDSSs that have custody of the children in the facility will be notified by OCFS or the VA. If the operating certificate of a facility is suspended, the LDSS(s) will be notified immediately, as the children in the facility will need to be moved immediately.

### 1. Facility closure

Residential facilities may close for a variety of reasons. In some cases, financial pressure or other reasons cause agencies to close facilities voluntarily. OCFS also has the authority to order the involuntary closure of facilities that do not meet standards for protecting the safety and well-being of the children in their care.

#### ***a. Voluntary closure of a facility***

OCFS regulations provide that a facility may not discontinue operation without submission of a notice to OCFS at least 90 days before the date of the proposed discontinuation of operation [18 NYCRR 476.2(d)]. The notice must include a plan, to be approved by OCFS, for the transfer of all residents in the facility to be closed. However, there are rare situations when an agency is forced to close in short timeframes either due to a major fiscal or program issue and providing 90-day notice is not feasible. In either case, there are specific steps that an agency must follow when closing a facility or an entire agency.

In all cases, the agency must send OCFS a formal letter from the agency's board of directors providing official notification of their decision to cease operations, including the effective date of closure. The agency must include its plan to notify and conduct ongoing communication with all referring agencies during the close-down process.

The agency must develop a comprehensive close-down plan that provides reasonable assurances for maintaining appropriate staffing and supervision in order to safeguard the health and safety of all residents.

When an agency determines that it will close a facility, the agency must immediately begin to work with the LDSS or Committee on Special Education that placed the children to determine where children in the facility will be moved when the facility closes.

***b. Involuntary closure of a facility***

After an inspection or investigation, OCFS may decide that the operating certificate of a residential care facility should be revoked, suspended, modified, or limited. Revocation means that the operating certificate of the facility will be terminated, but the termination does not take effect immediately. Suspension means that the operating certificate is terminated immediately. Modification or limitation means that the operating certificate remains in place, but at least one of the terms of the operating certificate is changed.

The agency that operates the facility has the right to a hearing to review the decision. When the agency requests a hearing, OCFS must extend the duration of an operating certificate until the hearing decision is issued, the hearing request is withdrawn, or the agency defaults the hearing [18 NYCRR 343.2].

If, however, it has been determined that a residential care facility is operating in a way that places the health, safety, or welfare of the public or an individual in imminent danger, the certificate may be temporarily suspended or limited without a hearing for not more than 30 days [18 NYCRR 343.2]. The LDSS also may order the agency to discontinue a dangerous condition or activity immediately or within a specified period of less than 30 days. In these cases, the agency must respond to the allegations within 10 days [18 NYCRR 343.5].

When the operating certificate of a facility operated by a VA is being revoked, modified, or limited, the LDSS(s) that has custody of the children in the facility will be notified by OCFS or the VA. If the operating certificate of a facility is suspended, the LDSS(s) will be notified immediately, as the children in the facility will need to be moved immediately.

## Chapter 10:

# Assessing the Safety of Children in Foster Care

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## Chapter 10

# Assessing the Safety of Children in Foster Care

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The goal of placement in foster care is to provide a safe environment for children who are not safe or cannot adequately be cared for in their own homes. The LDSS with legal custody has the ultimate responsibility for monitoring the safety of children who have been placed in foster care settings. Foster care workers must be vigilant in observing conditions in the foster home and encouraging children to report any incidents of abuse or maltreatment.

For information specific to care provided in residential/congregate care, see [Chapter 9](#) of this guide, “Residential Care Facilities.”

## **A. Casework contacts**

To effectively assess the safety of children in foster care, caseworkers must have regular contact with them and those caring for them. The federal Administration for Children and Families (ACF) has identified a positive correlation between the number of casework contacts and positive outcomes for children in foster care. These outcomes include: achieving reunification or other permanent placement; preserving children's connections and relationships with family members; and greater involvement of children, parents, and other relatives in case planning. Sections [422\(b\)\(17\)](#) and [424\(f\)](#) of the Social Security Act (SSA) require caseworkers to have monthly contact with children in foster care.

All casework contacts with foster children in New York State, including those with children placed in foster family boarding homes or facilities located outside the state, must be made in person, face-to-face. In addition, casework contacts via mail, phone, or videoconference with youth in foster care who are 18 years of age or older and are attending educational or vocational programs 50 miles or more outside of the LDSS are not acceptable.<sup>1</sup>

OCFS regulations set forth the standards for casework contacts with the foster child, the foster child's parent or relative, and the foster child's caregiver [[18 NYCRR 441.21](#)]. Also refer to the OCFS policy directive, "Casework Contacts for Children in Foster Care" ([16-OCFS-ADM-16](#))

### **1. Casework contacts with the child**

Casework contacts with the child are individual or group face-to-face contacts between the child and his/her caseworker assigned to the child, as directed by the case planner. Casework contacts also may be made by the case planner or case manager. The purpose of these contacts is to assess the child's current safety and well-being, to evaluate or re-evaluate the child's permanency needs and permanency goal, and to guide the child toward a course of action aimed at resolving problems of a social, emotional, or developmental nature that are contributing to the reason(s) why the child is in foster care [[18 NYCRR 441.21\(c\)\(1\)](#)].

For a summary of casework contact requirements, please see the "Foster Care Casework Contacts Desk Aid" ([OCFS Publication 5156](#)).

During the first 30 days of placement, casework contacts with the child are to be held as often as is necessary to implement the services tasks in the FASP but must occur at least twice. At least one of the two contacts must be held at the child's placement location. The focus of the initial contacts with the child must include, but need not be limited to, determining the child's reaction to the separation and his/her adjustment to the out-of-home placement and arranging for services necessary to meet his/her needs. After the first 30 days of placement, casework contacts are to be held with the child at a minimum of once a month. At least two of the monthly contacts every 90 days must be at the child's placement location [[18 NYCRR 441.21\(c\)\(2\)](#)].

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<sup>1</sup> OCFS. "Casework Contacts for Children in Foster Care" ([16-OCFS-ADM-16](#))

Monthly contacts are required for only those months during which the child is in care for the full month. If a child has gone home for a trial discharge (still in the Commissioner's legal custody), then the time the child is at home must be included when determining if a visit has been made during the month. Monthly contact requirements also apply to children or youth were absent without consent from their placement location during the month.<sup>2</sup>

**a. *Children placed outside of New York State***

The same casework contact requirements apply when a child has been placed in a home or facility located outside of the State of New York. Such contacts must be made either by the authorized agency with case management and/or case planning responsibility for the child, a public agency in the state in which the foster home or facility is located, or a private agency under contract with either the authorized agency or the other public agency [18 NYCRR 441.21(c)(3)].

**b. *Children placed with other state agencies***

When children are placed in a facility that is operated or supervised by the Office of Mental Health (OMH), Office for People with Developmental Disabilities (OPWDD), Office of Alcoholism and Substance Abuse Services (OASAS), or the Department of Health (DOH), the monthly casework contacts may be conducted by the appropriate staff from one of the above state agencies or by appropriate staff that performs like or similar functions under contract with the state agency. These agencies must provide documentation that the contacts satisfy the frequency, location, and content requirements in New York State regulations [18 NYCRR 430.12(c)(3)].<sup>3</sup>

## **2. Casework contacts with child's caretakers**

Casework contacts with the child's caretakers are face-to-face contacts with those persons immediately responsible for the child's day-to-day care. The caseworker assigned to the child, as directed by the case planner, the case manager, or the case manager must use these contacts to obtain information as to the child's adjustment to foster care and to facilitate the caretaker's role in achieving the desired course of action specified in the FASP [18 NYCRR 441.21(d)(1)].

During the first 30 days of placement, casework contacts are to be held with the child's caretaker as often as is necessary, but at a minimum must occur at least once at the child's placement location. After the first 30 days of placement, casework contacts must be held with the child's caretaker at least monthly. At least one of the monthly contacts every 90 days must be at the child's placement location [18 NYCRR 441.21(d)(2)].

See [Section C](#) of this chapter for more information about ongoing safety assessments by all child care workers involved with the placement.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

### **3. Documenting casework contacts**

Casework contacts are documented in progress notes in CONNECTIONS (CONNX), and must show when the contacts were made, the location of the contacts, and participants, and the content of the contacts. If the child is placed outside of New York State or with another state agency, the appropriate state or contract staff must forward information concerning the date, location, content of the contact, and services provided to the foster child to the LDSS or VA case manager, case planner or case worker responsible for maintaining the foster child's uniform case record. This information must be forwarded as soon as possible after the casework contact occurs so that the information may be entered into CONNX within two weeks after the casework contact is made. For more information, see the OCFS Tip Sheet "[Progress Notes: Successfully Documenting Casework Contacts with Children in Foster Care.](#)"



### **Practice Tip: Effective casework contacts**

A casework contact is not just a casual visit, or an observation of the child or foster family. Casework contacts must be related to the Service Plan goals. Visits or contacts with the foster family that are not related to the child's or family's Service Plan goals, and visits made by people other than those authorized to make casework contacts, are not considered to be casework contacts.

For example, a day-care center bus driver's contacts with a child are not counted as casework contacts because bus drivers are not among the service providers allowed to make casework contacts. Similarly, a caseworker accompanying a family to a court hearing is not, by itself, a casework contact. Although the caseworker is among those who can make casework contacts, sitting in a courtroom does not constitute a casework contact with the child or foster family.

Effective casework contacts are:

- Primarily held in the child's placement location at times convenient for children and foster parents.
- Planned in advance, with issues noted for exploration and goals established for the time spent together, but open enough to allow meaningful contributions from each participant.
- Individualized, with separate times for discussion with children and foster parents. This provides the opportunity for each to privately share experiences and concerns.
- Focused on the child and arranging for services necessary to meet his/her needs.
- Exploratory in nature, examining changes in the child's or foster family's circumstances on an ongoing basis.
- Supportive and skill-generating, so that children and families feel safe in dealing with challenges and change and have the tools to take advantage of new opportunities.

Following a casework visit, caseworkers might ask themselves the following general questions (as well as others specific to the family visited):

- Did I spend sufficient time planning the visit and did I meet the goals established for the visit?
- Did the child or youth in care have input during the visit, if appropriate?
- What worked well during this visit, and how might I share my successful approaches with other agency staff?
- What types of challenges did I experience during the visit and how might I have addressed those better? Are there specific areas in which I need additional guidance or training?
- What did I learn through the visit that needs to be addressed?

*Source:* National Conference of State Legislators. (2006). "Child Welfare Caseworker Visits with Children and Parents," *Innovations in State Policy*, September 2006.

## B. Maintaining privacy and confidentiality

According to state law, individual identifiable information relating to children in foster care is confidential and must be safeguarded from coming to the knowledge of, and from inspection or examination by, any person or entity other than one authorized by law [SSL §372(4)(a)]. One reason for this requirement is to promote the safety of the child and his/her caregivers.

### 1. Electronic records

When working on a case record in CONNX, foster care workers have an obligation to protect and preserve all information in a consistent and reliable manner. This may include physical and procedural controls (such as locking a computer screen). Information must be protected and classified based on security best practices. See [Appendix 10-A](#), “Protecting Confidential Information.”

### 2. Paper records

Any paper record that contains individually identifiable information must be kept either in rooms that are locked when the records are not in use or in locked files. All such records should be marked "Confidential." Records may be used only by persons within OCFS, LDSS or VA whose specific job responsibilities cannot be accomplished without access to individual identifiable information and must not be exposed to anyone else.

Foster care workers must not take records home without prior authorization by appropriate supervisory staff. When prior authorization is granted to take records home for a specific function or purpose, they must be kept in a secure location, not shared with anyone other than those expressly authorized by statute or regulation and be returned on the next business day that the staff member is in the office. When records are moved from one location to another, they should be placed in sealed envelopes marked "Confidential." [18 NYCRR 357.5].

### 3. Portable and mobile devices

Portable devices storing or accessing confidential information related to an OCFS case present a unique security threat due to their small size and portability. They can be easily lost, misplaced, or stolen. The loss or theft of a portable device places at risk the confidentiality of the device's contents and information. The unauthorized disclosure of confidential information could cause great harm to children and families, and is also a violation of law. Detailed requirements for portable device security are provided in the Administrative Directive, “Portable Device Security and Remote Access Guidance” ([13-OCFS-ADM-01](#)).

OCFS requires each LDSS to develop and implement a policy governing the use of mobile devices that ensures appropriate protection of, access to, and disclosure of confidential, personal, private, and/or sensitive information. The policy must:

- Provide a comprehensive overview of the acceptable uses of a mobile device;
- Define what resources are permitted to be accessed from mobile devices (e.g., email);

- Specify what types of mobile devices can be utilized
- Outline the degree of access that various classes of mobile devices may have
- Specify how provisioning will be handled

For more information, see “Establishing a Policy for the Use and Management of Mobile Devices by Local Departments of Social Services” ([17-OCFS-LCM-14](#)).

#### **4. Social media**

Caseworkers and foster parents are likely to use social media to communicate with agency staff, friends, and other family members. Unlike phone calls or texts, Facebook posts and Twitter “tweets” are accessible to a much wider audience. There is a much greater risk of misdirected messaging and an enhanced risk of miscommunication. Any individual identifiable information, including, but not limited to, photographs of children in care, is confidential and must not be included in posts on Facebook, Instagram, or other media-sharing applications.<sup>1</sup>

#### **5. Training for caseworkers**

OCFS has produced a 45-minute, web-based information security awareness training course. This training is designed to provide staff with information regarding information security procedures and processes required to protect the confidentiality, integrity, and availability of client information. As required by the New York State Information Security Policy, information security training is compulsory for all staff having access to confidential state information. This training obligation may be satisfied by staff completing the training offered by OCFS or through completing a similar online training course offered by the Office of Temporary and Disability Assistance (OTDA). The OCFS training is available through the state’s Human Services Learning Center website (<https://www.hslcnys.org>).<sup>2</sup>

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<sup>1</sup> OCFS. *Revitalizing Recruitment: A Practical Guide for Finding and Keeping Foster, Adoptive and Kinship Homes*, p. 76.

<sup>2</sup> OCFS. “Information Security Awareness Training Requirement” ([13-OCFS-LCM-03](#)).

## C. Ongoing safety assessments in foster care settings

A caseworker's focus on safety does not end when a child is placed in foster care. Caseworkers must continually reassess both safety and the appropriateness of the child's placement. The focus of assessment in the Safety Assessment completed earlier in the FASP is on the child's home of origin. In the Foster Care Issues section of the FASP, the focus is on safety within the foster care setting.

The federal Adoption and Safe Families Act [PL 105-89] requires child safety assessment in foster care settings. OCFS regulation 18 NYCRR 430.11(c)(2)(vii) requires that the foster child's uniform case record must include a written assessment of the safety and appropriateness of the placement. There are multiple factors that may influence the safety of a child in a particular foster care setting. For both CPS and non-CPS cases, a child's safety in the foster care placement can be affected by multiple variables including, but not limited to, the adherence to home or facility licensing standards, foster care resources, adequacy of supervision, and living conditions. In addition, safety can be affected by the behaviors of caregivers, other adults, and other children who may have access to the child.

It is essential that all caseworkers assess for safety every time they are in the foster home. In the "Foster Care Issues" section in CONNX, caseworkers are required to assess and document:

- What factors ("protecting factors") within the foster care setting promote and support the safety of the child and other persons living there?
- Are there any persons, circumstances, or child behaviors that may present safety concerns within the foster care setting, and what steps has the caseworker taken to address these concerns and to protect the child as needed?

The protecting factors assessment helps caseworkers to identify the strengths and resources within a placement setting that support safety. The absence of such protecting factors may lead to safety issues within the foster care setting. It is recommended that foster care workers work closely with the homefinder who first recruited the foster family to identify and resolve issues that may present a risk for children in the home.<sup>1</sup>

If safety becomes a concern within the foster care setting, caseworkers/agencies must take immediate and effective action to protect the child and remedy the situation.<sup>2</sup>

### 1. Protecting factors

Protecting factors are any strengths, attributes, circumstances, and resources that serve to promote and support safety. The following are just a few examples of the factors that can support safety in a foster care setting. Responses to the protecting factors question in the FASP should be individualized to the specific child and setting. These serve only as examples and are in no way inclusive of all possibilities.

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<sup>1</sup> OCFS. "ASFA Safety and Permanency" ([00-OCFS-INF-05](#))

<sup>2</sup> OCFS. *Family Assessment and Service Plan Guide*. Module 8, "Foster Care Issues." Professional Development Program. Accessed at <http://ocfs.ny.gov/ohrd/FASP/pdf/Complete%20FASP%20Guide.pdf>

- The foster home is certified or approved, or the facility is licensed to serve children of this child's age and/or special needs.
- Foster parents, and all adults in the home, have completed FBI and DCJS criminal history checks and have completed SCR, as applicable, out of state SCR and Justice Center clearances.
- Staff at a facility have completed SCR and Justice Center clearances and have completed FBI and DCJS criminal history record checks.
- Staff/foster parents have received appropriate training/certification to work with these children, and they receive relevant updates/recertification as needed.
- There is an appropriate staff/child ratio at this facility (i.e., the facility meets the OCFS and program's required staff/child ratio), and sufficient coverage on all shifts to manage the number of children living there.
- The number of children living in the foster home/facility is within its certified, approved, or licensed capacity, and has sufficient respite resources to enable them to effectively manage the number of children in the home/facility.
- The number of children in the home/facility is, where necessary, specifically limited to enable adults to provide more intensive supervision/care to meet this child's needs.
- The mix of children within the home supports safety, (e.g., age, size, vulnerability of children).
- There is sufficient space and bedding for number of children in the home/facility and home/facility meets fire/housing code standards. There are no known physical hazards.
- Foster parents/facility staff have proof of child's medical insurance and access to medical providers appropriate to meet child's needs.
- Foster parents/facility have transportation to access needed services.<sup>3</sup>

For more information on supporting foster families, see [Chapter 8](#) of this manual.

## 2. Safety concerns

Safety concerns within the foster care setting can be similar to safety issues at home. Children's basic needs may go unmet, physical or sexual abuse may occur, or emotional needs may be ignored. Caseworkers must continually assess the degree to which the child's needs for safety are being met within the home. It is the worker's ongoing duty to proactively assess circumstances within the foster care setting, both before a child is placed in that specific foster care setting, and continuously throughout the child's placement. If safety becomes a concern within the foster care setting, caseworkers/agencies must take immediate and effective action to protect the child and remedy the situation.

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<sup>3</sup> *Ibid.* "What are protecting factors in a foster care setting?" pp. 8-20 to 8-23



### **Practice Tip: Responses to safety concerns**

Listed below are some steps that can be taken or services that can be provided, within the foster care setting, to support safety and to protect a child when necessary. Workers and supervisors must make a case-by-case assessment as to what measures are necessary and sufficient in any given situation. Steps taken should be documented in the FASP.

- Assist foster family in obtaining financial resources, including timely foster care payments
- Assist foster family in obtaining needed concrete resources (clothing, beds/bedding, transportation, medical equipment)
- Discuss with foster parents/staff alternative strategies for managing child's behaviors
- Increase contact between caseworker and foster care providers to assess the situation more regularly and to provide support
- Provide respite or other support resources (e.g., connect foster parent with support group or individual mentor)
- Provide increased supervision of the foster home
- Provide crisis resources when needed
- Arrange for foster parent training to meet child's specific needs
- Provide access to qualified professionals who can inform caregivers and/or assist with child's special needs
- Advocate with schools, medical providers/insurers, community resources to obtain needed services for child
- Ask for removal of dangerous items or substances, and follow-up
- Increase supervision of a specific child
- Increase facility staffing
- Reduce number of children in the home
- Move child to another home or facility
- When necessary, make SCR or VPCR report, call police, or contact oversight agencies

*Source: OCFS (2013). Family Assessment and Service Plan Guide. Module 8, "What can caseworkers do to address safety concerns or vulnerabilities in a foster care setting?" pp. 8-23 to 8-24.*

While some events or circumstances within a foster home may necessitate a report to the SCR, as of June 30, 2013, reports of suspected abuse or maltreatment of foster children cared for in residential facilities by staff of such facilities are to be made to the Vulnerable Persons' Central Register administered by the Justice Center [[SSL §492](#)].

It is important that agencies, caseworkers, and foster care providers work together proactively to see that the child's physical and emotional needs are being met *before* a child is harmed or *before* it becomes necessary to move a child. While some moves will certainly increase the child's sense of physical and emotional safety, a move from one foster care

setting to another can be just as traumatic and disruptive for the child as the original removal from home, especially if it results in separation from siblings or other family members. Child safety is always the paramount concern.

## D. Safety in the foster home environment

The safety of the foster home environment is evaluated during a home study at the time the family applies for certification or approval as a foster family boarding home. See Chapter 7, Section B.3 of this manual for these requirements. Caseworkers should continue to assess the home environment for safety hazards during regular casework contacts and visits and at renewal.

In addition to the safety measures listed here, other day-to-day safety recommendations are included in the [New York State Foster Parent Manual](#), which the LDSS or VA must give to every certified and approved foster family.

If a caseworker observes any safety issues in the home environment, they must be addressed with the foster family. The concerns and their resolution must be documented in the Progress Notes. If safety concerns persist, they should be reported to supervisory staff and the appropriate homefinder.

### 1. Fire safety

The factors to be considered in discussing fire safety issues with foster parents are listed in the Safety Review Form ([OCFS-5183E](#)). It is recommended that caseworkers periodically review these topics with foster parents, especially if there have been renovations or additions to a home. These topics may include, but are not limited to:

- Frayed electrical cords, overuse of extension cords, and overloaded electrical circuits
- Smoking practices, including the use of matches, lighters, and ashtrays
- Storage of flammable liquids and combustible materials
- Chimney safety
- Grease on cooking surfaces
- Fireplace/woodstove safety

#### a. Alarms and detectors

The requirement for foster boarding home certification or approval specifies that the home must be equipped with at least one smoke detector and carbon monoxide detector [[18 NYCRR 443.3\(a\)\(13\)](#)]. In addition, OCFS policy requires that there be at least one smoke detector on each floor of the foster home. All detectors must be in working order. More information related to carbon monoxide detectors is available in the OCFS policy directive, “Standards of Installation and Maintenance of Carbon Monoxide Detectors and Amanda’s Law” ([10-OCFS-ADM-02](#)).

OCFS regulations also require foster homes be in substantial compliance with all applicable provisions of state and local laws, ordinances, rules, and regulations concerning health and safety [[18 NYCRR 443.3\(a\)\(2\)](#)]. The Residential Code of New York State (RCNYS) Section 317.1.1 requires smoke alarms to be installed in each story within a home.

**b. Fire extinguishers**

According to (the requirement on the LDSS-3751 form, there should be at least one multipurpose or ABC type of fire extinguisher mounted in the kitchen area, and all occupants should know how to use it.

**c. Fire safety drills**

The family should develop an exit drill plan with at least two means of escape from each floor of the house. A fire drill should be conducted in the home at least once a year and within a week following the placement of a child in the home. All adults and school-age children in the home should know how to call the fire department.

The following fire safety pamphlets and flyers from the New York State Office of Fire Prevention & Control may be duplicated and provided to foster families, as requested:

- [Exit Drills in the Home](#)
- [Candle Fire Safety](#)
- [High-Rise Fire Safety](#)
- [Home Fire Safety Tips](#)
- [Chimney Fire Safety](#)
- [Smoking Fire Safety](#)
- [Home Fire Extinguishers](#)
- [Smoke Alarms](#)
- [Cooking Fire Safety](#)

**2. Safe sleep environment for infants**

In accordance with OCFS regulation [18 NYCRR 443.3\(a\)\(8\)](#), each child placed in a foster home must have “a separate bed or crib of sufficient size and cleanliness for the comfort and well-being of the child.” This regulation refers to a “crib” and does not authorize a bassinet, cradle, or bedside co-sleeper. OCFS considers a portable play-yard (similar to a crib) to be a crib for this purpose.

When a LDSS or VA is placing an infant in a foster or pre-adoptive home, it must confirm that the foster/adoptive parent has a crib of sufficient size and cleanliness. No infant may be placed in a certified or approved foster or adoptive home until the local district or voluntary authorized agency confirms that the foster or pre-adoptive home has a crib.

In an emergency placement, the worker must discuss the infant’s sleeping accommodations when the infant is placed to ascertain that the foster parent will provide a safe sleep environment. The worker must document the assessment and discussion with the foster parent of the sleep accommodations in the worker’s case notes. Whenever a foster parent takes on the care of an infant, a foster care worker must provide information to the foster parent on safe sleep, including the risks of bed-sharing, unless it was previously provided.

Providing the information sheet published by the U.S. Department of Health and Human Services entitled "[What does a safe sleep environment look like?](#)" is one way to satisfy this requirement.

The worker must inform the foster parent(s) that bed-sharing with an infant is not acceptable. The failure and continued refusal by a foster parent or pre-adoptive parent to provide a child with a safe sleeping environment may be a basis for the removal of the infant from that home. Whenever an infant is placed into foster care and there is contemplation of trial or final discharge of the infant to the parent or other caregiver, the LDSS or VA with case planning responsibility must ascertain that the infant has a safe sleeping environment in such home. Any assessment and subsequent interventions related to safe sleeping arrangements must be documented in the child's progress notes.<sup>1</sup>

### 3. Firearms and hunting

All firearms, rifles, or shotguns owned by foster parents must be stored safely and securely. They must also be maintained in compliance with applicable State and local standards regarding the licensing, storage and maintenance of such weapons [18 NYCRR 443.3(a)(15)].

New York state laws [Environmental Conservation Law §§ 11-701 and 11-929] set forth the standards for the age at which a child may hunt, what weapons may be used, where consents are required, and the need for adult supervision. Even if the child in foster care is legally authorized to hunt, where appropriate, the birth/adoptive parent, guardian or prior caretaker should be consulted before he or she is given permission to do so.

In addition, the caregiver must obtain prior permission from the LDSS before allowing a foster child in the caregiver's care to hunt. Additionally, the caregiver must apply the reasonable and prudent parent standard in determining whether to allow a child to participate in hunting; this includes considering the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, the child's history with hunting, supervision of the child while hunting (if the child is under the age of 16), and familiarity with the child.<sup>2</sup>

### 4. Lead poisoning hazards

Federal regulations [40 CFR Part 745] and New York State Department of Health Public Health Law Title 10 of Article 13 address hazards created by renovation, repair, and painting projects that disturb lead-based paint in childcare facilities and in homes where children receive care more than two days a week. Contractors who do this work must inform homeowners and residents about the hazards associated with lead-based paint by giving them a copy of the pamphlet, [The Lead-Safe Guide to Renovate Right](#). They also must follow work practices designed to prevent lead contamination. In homes constructed prior to

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<sup>1</sup> OCFS. "Safe Sleeping of Children in Child Welfare Cases" ([13-OCFS-ADM-02](#))

<sup>2</sup> OCFS. "Know Before You Say No" (15-OCFS-ADM-21, [Attachment C](#))

1978, this rule applies to any work that involves internal areas of more than six square feet, external areas of more than 20 square feet, window replacement, or demolition.<sup>3</sup>

Local laws and codes may be more restrictive; check with the municipality in which the home is located.

## 5. Other safety concerns

### **a. Pools**

Foster homes with swimming pools must meet all local building code installation and safety requirements and regulations. Also, unless the local code requires a higher fence, there must be a fence at least four feet high surrounding the pool.

### **b. Window guards**

The dwelling must have window barriers, including window screens, guards and/or stoppers above the first floor of the foster home. Local requirements for window guards vary throughout the state, so local laws or ordinances must be consulted [[18 NYCRR 443.3\(a\)\(10\)](#)].

### **c. Use of tobacco products**

LDSSs and VAs should not place children who are very young, allergic, or asthmatic in homes where any resident smokes. According to OCFS policy, caseworkers should actively discourage children in foster care from smoking and cannot assist the child in purchasing or obtaining cigarettes. Foster parents are allowed to smoke in their own homes, but they should be encouraged do so away from children in their home to avoid exposure to second-hand smoke.<sup>4</sup>

The use of tobacco products by staff or residents is not allowed on the grounds of institutions, group homes, group residences, or agency boarding homes [[18 NYCRR 441.23](#)]. Tobacco products include but are not limited to cigarettes, cigars, pipe tobacco, and chewing or dipping tobacco.

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<sup>3</sup> OCFS. "Lead Safe Practices" ([10-OCFS-INF-05](#))

<sup>4</sup> OCFS. "Smoking in Foster Homes" ([04-OCFS-INF-05](#)).

## E. Additional safety assessments

Each child care agency and facility operated by such agency is required to maintain, and keep current and available, a manual or manuals which clearly state its policies related to discipline and restraint, appropriate custodial conduct, children's rights, room isolation, and safety [18 NYCRR 441.4]. Foster parents should contact their caseworker when discipline issues arise.

State regulations describe several disciplinary methods that are prohibited for children and youth in foster care:

- Deprivation of meals, snacks, mail, or family visits
- Room isolation
- Corporal punishment
- Solitary confinement

Discipline must be prescribed, administered, and supervised only by adults. Such responsibilities must never be delegated to children [18 NYCRR 441.9].

### 1. Discipline

The long-standing goal of discipline regulations has been to protect children in agency care from harmful punishment, abuse, maltreatment, and improper supervision. The discipline regulations are founded on these principles:

- Discipline is an integral part of the education and socialization of every child.
- Normal growth of a child and the development of a strong self-concept is not possible without effective discipline. A strong self-concept is a feeling of self-worth and self-identity that is realistic rather than distorted by feelings of personal inadequacy, irrational anger, or guilt.
- Harsh and severe punishments are ineffective methods of discipline, impede the development of a strong self-concept, and increase the social distance between caretaking adults and children.
- The nature of each child's disciplinary experience profoundly influences the development of personality and the formation of character.
- The quality of disciplinary practices often determines the stability, order, and health of a family or group.

Adults responsible for the discipline of children should understand each child's need for respect, dignity, security, positive role models, and satisfying relationships with peers and adults, especially those who are perceived as the controlling authority in their lives.<sup>1</sup>

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<sup>1</sup> OCFS. "The Discipline of Children in Foster Care" ([88-OCFS-ADM-07](#))

## 2. Restraint

The use of restraint is allowed in limited circumstances in congregate foster care settings. OCFS regulations define “restraint” as the containment of acute physical behavior by physical, mechanical, pharmacological intervention, or room isolation [18 NYCRR 441.17(a)(1)]. Restraint does not mean time out. *Time out* is defined as the removal of a child from a situation that is too threatening or emotionally overwhelming for the child or where the child may lead other children into an uncontrollable state or where the child has exceeded the reasonable limits set by the staff [18 NYCRR 441.17(a)(7)]. Restraint also does not mean confinement of a child to his or her own room for treatment or disciplinary reasons.

Restraint must be used without purposely inflicting pain or harm, and only when other forms of intervention are either inappropriate or have been tried and proved unsuccessful. Restraint, including room isolation, can never be used for punishment or for the convenience of staff. An authorized agency cannot use any method of restraint unless it has submitted its restraint policy to OCFS and such policy has been approved in writing by OCFS [18 NYCRR 441.17(b) & (c)].

For more information on the use of restraint in congregate care, refer to [Chapter 9](#) of this practice guide, “Residential Care Facilities.”

## F. Children and youth absent without consent

Children voluntarily leave foster care for a variety of reasons and for varying lengths of time. In some cases, the children may be running away from something (e.g., a placement the child dislikes), and in others running to something (e.g., friends, family, unhealthy situations). The children may feel that their decision to leave was the best choice, given their individual circumstances.

Unfortunately, children and youth may not always think through the consequences of their actions, nor accurately identify the resources needed to be safe during a runaway episode.

In general, youth who voluntarily leave their placement or their home have a greater likelihood than their peers of high-risk behaviors, including unprotected sex, multiple sex partners, and drug use. They also have greater risk of anxiety, depression, suicide, poor health, and low self-esteem. Runaway and homeless youth are at greater risk of being commercially sexually exploited or trafficked.<sup>1</sup>

Because of the high level of risk for children and youth who are determined to be missing from foster care, whether voluntarily or involuntarily, OCFS regulations and policy require that an LDSS or VA report the child's absence to law enforcement and to the National Center for



### **Practice Tip:** *Why do youth run away from foster care?*

According to a study conducted by the Urban Institute, the reasons youth run from their foster care placements can be classified into two basic categories: (1) wanting to be with family and friends and (2) disliking their placement.

Youth who were unhappy with their placements felt that a change in placement would have prevented them from running away. They wanted more freedom and fewer rules, reflected in more trust and more respect.

Youth felt that they should be allowed to see their families more often and that group homes should give out passes more easily to facilitate visits with their families.

In general, there was a widespread feeling among youth that they need someone to talk to, who will listen to them and help work through problems. Many felt they couldn't talk to their foster parents. Youth in group homes felt that therapists in group homes turned over too frequently.

Youth felt that caseworkers did not provide the support they needed. They felt that caseworkers should visit more often and find out how the youth is doing. Youth say they are not asked their opinions and that caseworkers rely on foster parents or visual inspections to determine if everything is fine. Youth want caseworkers to listen to them, try to understand, be reasonable, and be flexible.

*Source:* Ernst, M. & Pergamit, M.R. (2011). Running Away from Foster Care: Youths' Knowledge and Access of Services, <http://www.1800runaway.org/wp-content/uploads/2015/05/Part-C-Youth-in-Foster-Care.pdf>

<sup>1</sup> National Center for Missing and Exploited Children. "Children Missing from Care," accessed at <http://cmfc.missingkids.org/home>

Missing and Exploited Children (NCMEC). This notification must be made within 24 hours after learning that the child is absent without consent, missing, or abducted [18 NYCRR 431.8(b)(3)(i)]. This requirement also applies to any child or youth who is involved with the child welfare system and:

- The child's family has an open CPS case;
- The child is receiving federally funded independent living services;
- The child is under court-ordered supervision of a LDSS; or
- The LDSS has supervision responsibility of the child following discharge from foster care [18 NYCRR 431.8(b)(3)(ii)].

## 1. Required actions when child is missing from foster care

### *a. Foster parent or residential care staff*

Foster parents and residential care staff should know where a child is or is expected to be at all times. If the foster parent or staff becomes aware that the child's whereabouts are unknown, expeditious efforts should be taken immediately to locate the child.

The OCFS regulations define a child as "absent without consent" if a child in a certified or approved foster boarding home or licensed foster care facility disappears, runs away, or is otherwise absent, either voluntarily or involuntarily, without the consent of the persons or facility into whose care the child was placed [18 NYCRR 431.8(a)]. If a child is absent without consent, his/her absence must be reported to the authorized agency responsible for supervising the placement of the child. This report must be made no later than 24 hours from the time the absence occurs [18 NYCRR 431.8(b)(1)].

The reporting deadline does provide for some discretion on the part of the caregiver as to when during the 24-hour period to make the report. It is important to remember that as with so many other aspects of caring for children, decisions are not always black and white. Such decisions depend on several factors:

- *The age of the child.* For example, if a 3-year old disappears, the absence should be reported immediately. If a 16-year-old with no physical, cognitive, or emotional issues misses curfew, the situation can be dealt with by making diligent efforts to locate the youth and then, if the youth is located within a couple of hours, responding with the logical and appropriate consequences to such behavior.
- *The child's history.* If the youth can be considered to be in a high-risk category (see below), immediate reporting must occur. If no such history exists, diligent efforts must be made to locate the youth. If the youth cannot be located within a few hours, he/she is considered to be missing and the foster parent or residential care staff must report that absence.
- *The child or youth is considered to be in a high-risk category.* In this case, the report must be made immediately upon noting that the child is gone. Children or youth in high-risk categories include, but are not limited to:

- Those with medical needs requiring regular medication or monitoring
- Those with mental health issues which could pose a danger to the youth or others
- Those with a cognitive or physical impairment
- Those with a history of substance abuse
- Those with a history of sex trafficking or those for whom previous comprehensive screenings have shown ‘high’ indicator levels
- Children younger than 13 years of age
- Those where abduction is suspected <sup>2</sup>

According to OCFS policy, the foster parent or residential care agency representative should speak directly to a caseworker when reporting an absence. It should not be assumed that leaving a voice mail message is sufficient. If the report is made after working hours, the foster parent or residential care staff should follow the protocol for contacting the on-call caseworker.

#### **b. LDSS or VA staff**

Upon receiving the call from the foster parent or residential care staff, the LDSS or VA must determine whether a child is considered high-risk. If the child is considered to be high-risk, or if abduction is suspected, then the LDSS and/or VA must immediately report to law enforcement that the child is missing. In all other situations, a report to law enforcement must be made no later than 24 hours after the LDSS or VA is notified of the child’s absence. In all cases, the LDSS, VA, and the foster parent(s) must cooperate with local law enforcement in all efforts to locate and return the child. See Section E.3 of this chapter.

In addition to notifying law enforcement, the LDSS or VA must notify NCMEC that the child is absent without consent, missing, or abducted no later than 24 hours after receiving notice of such absence. This notification can be made either by phone at 1-800-THE-LOST (1-800-843-5678) or online at <http://cmfc.missingkids.org/home> by clicking on the "Report a Missing Child Here" tab.

In all cases where the VA received the report of the child being absent without consent, the VA must contact the LDSS within 24 hours of such absence to advise them that the child is missing and to inform them of the expeditious efforts being made to locate the child [18 NYCRR 431.8(b)(2)]. Where applicable, the VA must also advise the LDSS that the report has been made to NCMEC. The LDSS or VA must make ongoing efforts to locate the child as long as the child remains in the custody of the LDSS commissioner.

The authorized agency responsible for the placement of the child must inform the child’s parents within 24 hours of the determination that the child is missing. Such notice is not

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<sup>2</sup> OCFS. “Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care” (16-OCFS-ADM-09).

required if the parental rights have been terminated, the child has been surrendered for adoption, or the parents cannot be located [18 NYCRR 431.8(b)(4)].

When the Family Court has approved the foster care placement, the LDSS commissioner in whose legal custody the child was placed or the commissioner's designee must provide written notice that the child is absent without consent, missing, or abducted to the court that approved the petition within 48 hours of the reported absence [18 NYCRR 431.8(b)(5)].

There is no statutory requirement that a youth's absence from a residential facility be reported to the Justice Center in every case. Such a report must only be made if the youth's absence has the reasonably foreseeable potential to result in harm to the youth, or if the absence is due to a lapse in staff supervision.

For juvenile delinquents in Close to Home (CTH) settings, three additional steps are required [SSL §404(13)(d) and (e)]:

1. Upon learning that a youth in a CTH placement is absent without consent or missing, a VA in whose care the youth has been placed by the LDSS must provide immediate written notice to OCFS, the LDSS, and Family Court. For any such youth placed with the LDSS, a LDSS official must give immediate written notice to both OCFS and Family Court;
2. A warrant is to be issued for the apprehension and return of any runaway or conditionally released juvenile delinquent, where the youth has violated the terms of the release; and
3. A photograph and pertinent information is to be provided to law enforcement within 48 hours.

## **2. Ongoing efforts to locate the child**

The case manager or case planning supervisor must ensure that diligent efforts to locate the child are made within 72 hours after receipt of the report that he/she is absent without consent or missing. The following people must be contacted as part of these efforts [18 NYCRR 431.8(c)]:

- Members of the child's foster family household or the facility in which the child was placed
- Members of the child's biological family and known members of the child's extended family
- Child's legal guardian, if applicable
- Child's school principal, teachers, and other school staff
- Close friends of the child
- Adults known to be working with the child in recreational or educational activities

- Professionals involved with the child's development, including but not limited to, physicians and other medical professionals, clinical social workers, psychologists, etc.
- Administrator or coordinator(s) of the county's runaway and homeless youth services

In addition to these mandated contacts, it is recommended that the case manager or case planning supervisor also consider contacting the following as part of the efforts to locate the child:

- Parents of the close friends of the youth
- Local jails or detention facilities, if age-appropriate
- A former foster care placement

If a youth who is absent without consent cannot be located after conducting these required casework contacts, and the youth remains in the custody of the LDSS commissioner, the case manager or case planning supervisor is responsible for ensuring that a continuing effort is made to locate the child.

Within each 30-day period following the child's absence, reasonable efforts must be made to obtain information on the child's location. Sources to be contacted for such information must include, but are not limited to [18 NYCRR 431.8(c)(2)]:

- Members of the child's foster family household or the agency boarding home, group home or institution where the child was placed
- Members of the child's biological family and extended family, including relatives within the third degree of the child, where known, or legal guardian of the child
- The child's school principal, teacher(s) or other appropriate staff at the school last attended
- The administrator or coordinator(s) of the county's runaway and homeless youth services
- The local law enforcement agency

### **3. Warrants, law enforcement, and the Family Court**

If the LDSS or VA responsible for the care of a child who is absent without consent has information which might lead to the location of the child, such information must be transmitted by the LDSS or VA to the local law enforcement agency within 24 hours after receipt of such information. An updated photo of the child may be shared with law enforcement if requested. If it is suspected that the child may have been abducted, law enforcement may activate an AMBER alert.<sup>3</sup>

In addition, the LDSS commissioner or an authorized representative may petition the Family Court having jurisdiction over the foster child for a warrant to return the child who is absent without consent if the child's presence is required at a hearing or proceeding in Family Court

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<sup>3</sup> Ibid.

and the local law enforcement agency requires such a warrant before acting to return the child [18 NYCRR 431.8(d)].

When a criminal justice agency is conducting an investigation of a missing child, the criminal justice agency has no right of access to *foster care information* unless the child is absent without consent from a foster care placement, in which case the criminal justice agency has access as described above or upon issuance of a court order as authorized by SSL §372.

If the criminal justice agency is conducting an investigation of a missing child and is seeking *child protective services* information, the CPS of the LDSS must use the following standard when determining whether to provide the confidential information. The criminal justice agency must state that [SSL §422(4)(A)(I)(ii)]:

- It is conducting an investigation of a missing child,
- It has reason to suspect that a parent, guardian or other person legally responsible for the child is or may be the subject of a child protective report, or the missing child or the child's sibling is or may be another person named in such a report; and
- It needs the information to further the missing child investigation.

An LDSS cannot share information with a criminal justice agency from the record of any CPS report that was unfounded or was assigned to the Family Assessment Response (FAR) track. Only information from indicated reports and reports under investigation may be shared.<sup>4</sup>

#### 4. Case disposition for youth in care absent without consent

A youth who is 16 years or older, is absent without consent from foster care, and cannot be located or refuses to return to care after the responsible LDSS or VA has used diligent



#### **Practice Tip: Documenting a child's absence from care**

Documentation of all activities related to a child's absence must be made in CONNX.

- The child's absence must be recorded in CONNX within seven calendar days of the child's absence. If the child has been determined to be a runaway, payment to the authorized agency for the child's foster care must be suspended no later than seven consecutive calendar days after the child has been absent [18 NYCRR 431.8(f)(1) & 18 NYCRR 628.3(a)(4)(vi)].
- The absence must be recorded in the case record in the Family Assessment and Service Plan (FASP) within 30 days.
- Documentation should include, at minimum, the names of the persons contacted, dates of those contacts, and information pertaining to the child's absence.

Source: "Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care" (16-OCFS-ADM-09).

<sup>4</sup> OCFS. "Sharing Child Protective Services Information with Law Enforcement When a Child Is Missing" (16-OCFS-ADM-07)

efforts for 60 consecutive days, must be discharged from care if one of the following events occurs [18 NYCRR 431.8(f)(2)]:

- The LDSS commissioner petitions for and the Family Court grants termination of the LDSS commissioner's custody of the child
- The court order granting custody of the child to the LDSS commissioner expires
- A voluntary placement agreement is revoked by order of the court or by expiration of the agreement
- The child becomes 21 years old

A child who is under the age of 16 years and is absent without consent from foster care and who cannot be located after the responsible authorized agency has used diligent efforts for 60 consecutive days, must be continued as a case in suspended payment after the child has been absent for seven consecutive calendar days. The child's status must be indicated as absent until the child is located, or until one of the following events occurs [18 NYCRR 431.8(f)(3)]:

- The LDSS commissioner petitions for and the Family Court grants termination of the LDSS commissioner's custody of the child
- The court order granting custody of the child to the commissioner expires
- A voluntary placement agreement is revoked by order of the court or by expiration of the agreement
- The child becomes 21 years old

## **5. When a child returns to foster care**

When a child who was absent from care returns, OCFS regulations and policy require that specific actions be taken, including determining the reasons for the child's absence and identifying the steps that can be taken to address those reasons in both the current placement and any future placements. The child must also be screened to determine if he/she is a victim of sex trafficking [18 NYCRR 431.8(g) & (h)].

**Welcome the child back:** First and foremost, the child/youth should be welcomed back. The caseworker or foster parent should let the child/youth know that he/she was missed and that the foster parent or caseworker was concerned for the youth's safety. The child should be welcomed back with no judgment.

**Meet the child's immediate physical needs:** The caseworker or foster parent should attend to the child's physical needs: e.g., a meal, a shower, a change of clothes, and an opportunity to rest in a safe place. In addition, any immediate health or mental health needs must be addressed.

**Notify agencies:** The caseworker must notify the LDSS, VA, Family Court, and any other agency involved with the child.

**Cancel reports to law enforcement and NCMEC:** If the child had been reported missing to law enforcement and to NCMEC, both entities should be notified that the child has returned.

**Identify services the child may need:** Depending on the length of time the child was absent or missing, and the experiences he/she had during that period, rehabilitative services may be needed. These may include: psychological counseling, medical services, drug and alcohol abuse treatment, and remedial educational services. If a determination is made that any such services are needed by the child, referrals to providers of such services must be made and such referrals must be documented in the child's case record.

**Discuss consequences, if appropriate:** Depending on the age and developmental level of the child, as well as the circumstances of the child's absence, the foster parent or caseworker may need to discuss the consequences of the child's behavior. If the child's absence was voluntary, such as leaving home without permission to attend a party, it is appropriate to discuss the consequences of unacceptable behavior (e.g., grounding, withdrawal of permission to participate in a social activity, etc.).

**Identify the youth's reasons for leaving and experiences during the absence:** Once the youth's immediate needs have been addressed, the caseworker must pursue what happened to the child while he or she was absent or missing. Consistent with the reasonable and prudent parenting standard, approach the issue from the standpoint of concern about the child, e.g., "What happened to make you want to leave?"

The reasons could be as simple as the youth being concerned about his or her parents or siblings or just be the fact that the youth just doesn't want to be in care. The child should not be forced to talk. The caseworker or foster parent should engage the child in discussion about the absence and provide a supportive environment to encourage the child to discuss his/her feelings. See "[Debriefing Tool for Children and Youth Who Have Returned After Being Absent Without Consent, Missing, or Abducted.](#)"

**Create a safety plan:** The caseworker/case manager, foster parent or residential care staff, and the child should work together to create a safety plan. This plan should address the reasons for the youth's absence and what supports and actions are needed in both the youth's current placement and any future placements to prevent the youth from repeating the behavior.

**Screen for sex trafficking:** Once the child is stabilized, but no later than five days after his or her return to care, the caseworker or case manager must conduct a screening to determine if the child was a victim of sex trafficking while absent. See Section G of this chapter for more information.<sup>5</sup>

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<sup>5</sup> OCFS. "Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care," Attachment C. ([16-OCFS-ADM-09](#)).

## G. Sex trafficking

Though any child or youth can be a victim of sex trafficking, there are certain populations that are more vulnerable. Many of these vulnerable groups include children and youth for whom the state (or LDSS) has responsibility for placement, care, or supervision. These groups include youth who are:

- In foster care placements
- Adjudicated as Persons in Need of Supervision (PINS) LDSS cases
- Adjudicated as Juvenile Delinquents (JD) LDSS cases
- Child preventive services cases
- Child protective cases, including Family Assessment Response (FAR) cases
- Children who have run away from foster care but are not yet 21 years of age
- Children who are receiving Chafee Services (including those not in foster care)
- Juvenile justice placements<sup>1</sup>

Identification of victims and those at higher risk is important for several reasons. Once identified, a victim can receive services that are responsive to his/her needs. For those identified as at risk prior to a trafficking incident, services and supports can be put in place to help prevent victimization. In addition to better meeting the needs of trafficking victims and those at risk, identification can assist child welfare and other stakeholder agencies with developing more of an understanding of the scope of the problem, strategies for primary prevention, and level of service needed to address the issue.

In New York State there is a process to “confirm” victims of human trafficking, for which the Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS) are jointly responsible. This process is a referral mechanism to provide specialized assistance to victims as well as a method of collecting data. Victims do not need to be confirmed as victims through this process to qualify for services, but LDSSs and VAs should be aware that some of the children they are working with may be confirmed as victims.

For information about the Anti-Trafficking Law, including the confirmation process and LDSSs’ responsibilities when they receive a referral of a confirmed trafficking victim, refer to the OCFS Administrative Directive, “New York State Anti-Trafficking Statute” ([09-OCFS-ADM-01](#)).

### 1. Screening for sex trafficking

**Rapid Indicator Tool:** For all children, regardless of age, in the care, custody or supervision of LDSS or OCFS, the “[Rapid Indicator Tool to Identify Children Who May Be Sex Trafficking Victims or At Risk of Being a Sex Trafficking Victim](#)” must be used for a quick

<sup>1</sup> OCFS. “Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims” ([15-OCFS-ADM-16](#)).

screening to determine whether a comprehensive screening is needed. For children in foster care, the quick screening must be completed by the due date of the initial FASP. The screening can and should be completed prior to this due date in cases where there is concern that the child is a sex trafficking victim.

If the quick screening finds that the child does not have any indicators that give cause to believe he/she is a victim or at risk of being a sex trafficking victim, no further screening is needed at this time. If the quick screening reveals information that leads the worker to believe that the child is a victim of or at risk for sex trafficking, a more comprehensive screening must take place. If at any time in the life of a case, a worker learns new information that leads him or her to believe that the child is a victim of or is at risk for sex trafficking, another quick screening should be completed at that time.<sup>2</sup>

The results of the quick screening are documented in CONNX in the “Sex Trafficking Screening” window.



### **Practice Tip: Red flags for sex trafficking**

Foster parents and caseworkers should be aware of red flags that *may* indicate that a child is a sex trafficking victim. Workers should look for a pattern of red flags when identifying youth who may be a trafficking victim, or at risk of being a victim. Key red flags and vulnerabilities for child sex trafficking include, but are not limited to:

- History of sex abuse
- History of running away or current status as a runaway
- Signs of current physical abuse and/or multiple sexually transmitted diseases
- History of unstable home life
- Inexplicable gifts, getting hair/nails done, clothing, or electronics, such as cell phones, that do not fit the youth’s situation
- Presence of, or communication with, an older controlling boyfriend/girlfriend
- Significant substance abuse (youth with drug addictions are sometimes targeted because they can be easily controlled using drugs)
- Withdrawal or lack of interest with previous activities (depression or being forced to spend time with traffickers)
- Gang involvement, especially among girls
- Travel to other states or staying at hotels during a runaway incident

Source: National Center for Missing and Exploited Children. “Child Sex Trafficking in America: A Guide for Child Welfare,” accessed at:

[http://www.missingkids.org/content/dam/pdfs/NCMEC%20CST%20fact%20sheet\\_CWPProfessionals.pdf](http://www.missingkids.org/content/dam/pdfs/NCMEC%20CST%20fact%20sheet_CWPProfessionals.pdf)

<sup>2</sup> OCFS. (2015). *Op cit.* (15-OCFS-ADM-16).

**Comprehensive screening:** If the quick screening found that the child may be a victim or is at risk of being a sex trafficking victim, a comprehensive screening must be done within 30 days. The Child [Sex Trafficking Indicators Tool](#) is designed to assist the worker in determining if the child is a sex trafficking victim, or is at risk of being a victim.

It is recommended that workers reach out to the Safe Harbour Project lead their counties, if they are participating in the project, for assistance with the comprehensive screening. For non-Safe Harbour project counties, it is recommended that workers follow local protocols or reach out to the human trafficking liaison designated in their counties or another staff person who is specially trained on sex trafficking or Commercially Sexually Exploited Children (CSEC). Workers can also reach out to their county's OCFS Regional Office lead to obtain assistance from OCFS. A list of Regional Offices and contact information is available on the OCFS website at [https://ocfs.ny.gov/main/regionaloffices\\_main.asp](https://ocfs.ny.gov/main/regionaloffices_main.asp).

If the comprehensive screening finds that the child has no sex trafficking indicators, a medium level or a high level of indicators associated with sex trafficking, the case should continue to be monitored for as long as it is open, based on the indicator level, and services should be provided to address any indicators present. This result is documented in CONNX.

If the comprehensive screening finds that the child is a sex trafficking victim, the worker must report this to law enforcement immediately and no later than 24 hours after the identification of the child as a victim. The worker must complete the [Law Enforcement Report of a Child Sex Trafficking Victim](#) form and fax it to the appropriate agency:

- For New York City:  
New York Police Department (NYPD) at 646-610-7234
- For the Rest of the State:  
New York State Intelligence Center (NYSIC) at 518-786-9398

The fax must not include any miscellaneous information or the results of the screening tool(s). This will result in the report being retracted, amended, and/or re-submitted.



### **Practice Tip: Documenting sex trafficking**

If comprehensive screening finds that a child is a victim of sex tracking, this must be documented in the CONNX “Sex Trafficking Screening” window. If the child is in foster care, the documentation must indicate whether the victimization occurred prior to or after the child entered foster care.

The worker also must document that a report to law enforcement was made. It is recommended that the worker also document the police report number for reference and any actions that occur as a result of the report, if applicable.

If an emergency call was made and/or law enforcement was involved in the case prior to the screening, the law enforcement form does not need to be completed, but the law enforcement involvement must still be documented in CONNX.

## 2. Services for sex trafficking victims

Each case and each victim is unique. A “one size fits all” approach to providing services will usually be ineffective. Services must be victim-centered and trauma-informed. Human trafficking victims often experience multiple layers of trauma, including psychological damages from their trafficking situations. Emotional effects of trauma can be persistent and devastating. Victims may suffer from anxiety, depression, panic disorder, post-traumatic stress disorder (PTSD), substance abuse, and/or other psychological issues. They may re-experience trauma via flashbacks, nightmares, and intrusive thoughts; learn avoidance or numbing of trauma-related stimuli or triggers, such as avoidance of certain places, people, or situations; and may experience memory loss and hyper-arousal.<sup>3</sup>

Whenever a child is identified as a sex trafficking victim, or at risk of being a sex trafficking victim, the worker is required to determine appropriate services for the child.

It is strongly recommended that LDSSs and VAs use resources in their area that have specialized training and/or experience in providing services to child sex trafficking victims. It is also recommended that a local resource list be developed for this purpose. These resources may include, but are not limited to:

- Safe Harbour New York Project resources
- Runaway and homeless youth programs
- Domestic violence Programs
- Child Advocacy Centers or other multi-disciplinary teams
- Clinical/therapeutic programs
- Victim advocates
- Survivor-led programs

In addition, workers can receive information on local resources from National Human Trafficking Resource Center (NHTRC) at 1-888-373-7888. Any referrals for services should be documented in CONNECTIONS.<sup>4</sup>

## 3. Ongoing screenings

Child sex trafficking screenings must be ongoing throughout the life of a case and should occur multiple times as more is learned about the child and his/her experiences. In addition, sex trafficking screening is required when a child returns from being on runaway status or missing from foster care. For this reason, LDSSs and VAs must determine whether new child trafficking indicators have been identified at each FASP due date for all open foster care cases.

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<sup>3</sup> OCFS. “Promoting Awareness and Best Practices to Address Human Trafficking” ([15-OCFS-INF-08](#))

<sup>4</sup> OCFS “Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims” ([15-OCFS-ADM-16](#))

For the ongoing screenings, the worker must review the results of previous child sex trafficking screenings to see if any information needs to be updated, and make any changes needed. If there are changes to the level of indicators, the worker must document this change in CONNX and use this information to adjust the child's case plan.<sup>5</sup>

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<sup>5</sup> Ibid.

## Chapter 11: Services for Children in Foster Care

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## Chapter 11

# Services for Children in Foster Care

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While children are in foster care, case managers, case planners, and caseworkers must decide, on a case-by-case basis, what services should be provided that will help children recover from previous traumatic experiences, cope with the challenges of being in a foster home, and prepare for their discharge from foster care.

The *Child Welfare Practice Model* adopted by OCFS in 2015 describes a number of beliefs and values that drive the child welfare system in New York State, among which are:

- We listen first, then learn and proceed with knowledge, focusing on individual and family resources and strengths.
- We believe that services for children, families and adults must be individualized and culturally competent, recognizing and honoring differences in traditions, heritage, values, and beliefs.<sup>1</sup>

Part of the listening process is to effectively engage children and youth in decision-making about the services that are provided to them. Engaging children in an age-appropriate, respectful manner builds relationships and improves the child's feelings of confidence and self-worth. The input of the child should be considered during service plan development, when appropriate, and selected services should always be developmentally appropriate for the child.

If youth are able to make informed decisions about their services, it not only encourages more positive engagement in the actual service, but it also teaches the youth valuable life skills such as self-advocacy, informed decision-making, recognizing strengths, and understanding and addressing deficits.

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<sup>1</sup> OCFS. (2015). *Child Welfare Practice Model*, accessed at <https://ocfs.ny.gov/main/prevention/CW%20Practice%20Model.pdf>

## A. Areas to consider when providing services

### 1. Trauma-informed care

Life experiences can shape a person in both positive and negative ways. If a child lives in a world where he/she is maltreated or abused, the child's brain is trained to be hyper-alert for danger or non-responsive to emotions, and therefore, never fully developed. This can then impact his/her ability to respond to nurturing adults as well as to the receipt of services.<sup>1</sup>

The brains of children who experience abuse or maltreatment will focus their resources on survival and responding to threats in the environment. The child may withdraw from interacting with others, have inappropriate emotional outbursts, or be unable to concentrate on learning. When early life experiences are primarily negative, children may develop emotional, behavioral, and learning problems that persist throughout their lives.

Patterns in brain activity are not necessarily permanent, however. For example, when young children who had been victims of neglect received therapeutic, supportive care, their brains adapted and redirected neural pathways so that eventually they were the same as healthy children who had not been neglected.<sup>2</sup>

The foundation skills of functioning are built in childhood, but continue to develop into early adulthood. Therefore, it is paramount that caseworkers and service providers consider the impact of trauma and toxic stress on the child's brain development when delivering services to children in foster care, and recognize that it is never too late to make an impact.

### 2. Non-discrimination

New York State regulations prohibit local social services district (LDSS) or voluntary agency (VA) staff or volunteers from engaging or condoning discrimination or harassment against certified or approved foster parents, approved adoptive parents, prospective foster or adoptive parents, applicants for adoption services, or foster children on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability [18 NYCRR 421.3(d) and 441.24].

Regulations also specifically require that certified or approved foster parents must not engage in or condone such discrimination or harassment against children in foster care [18 NYCRR 441.24(a)]. The LDSS or VA must do the following:

- Promote and maintain a safe environment
- Take reasonable steps to prevent youth on youth discrimination and harassment
- Promptly investigate any incidents of discrimination or harassment by staff volunteers or youth, and

<sup>1</sup> Shonkoff, J.P. et al. (2000). *From neurons to neighborhoods: The science of early childhood brain development*. Washington D.C. National Academy Press.

<sup>2</sup> National Scientific Council on the Developing Child, *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain*, accessed at [http://developingchild.harvard.edu/resources/reports\\_and\\_working\\_papers/working\\_papers/wp12/](http://developingchild.harvard.edu/resources/reports_and_working_papers/working_papers/wp12/)

- Take reasonable and appropriate corrective/disciplinary action when incidents occur [18 NYCRR 441.24]

### 3. Religious designation

New York State regulations specify that the religion of a child in care shall not be changed, except on the written request of his/her parents or surviving parent or legal guardian [18 NYCRR 441.11(d)]. Each child care agency is responsible for the religious and moral welfare of the child while he/she is in care and must arrange for the child to continue to practice his/her faith while in care, including religious observance, instruction, and training, unless the parents, surviving parent, or guardian expressly requests otherwise in writing. The child care agency's religious instruction and training policy manual must include a positive policy on matters pertaining to religious observance, instruction and training [18 NYCRR 441.11(a) and (b)].

In addition, Social Service Law [SSL § 373] requires that, where practicable and consistent with the best interests of the child, efforts must be made to place the child in the care of a person or agency of the same faith as designated by the child's parent. If the child is placed in the care of a person or agency with a different designated faith, an explanation must be documented in the case record, along with documentation of the child's designated faith [18 NYCRR 428.3 (b)(2)(i) and 430.11(c)(2)(iii)]. Birth parents may make their religious preferences for their child known by using Form [LDSS-3416](#).

### 4. Limited English proficiency (LEP)

Federal law, regulations and policy require that reasonable efforts be made to provide language assistance to families with limited English proficiency to ensure meaningful access to services.<sup>3</sup>

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be limited English proficient, or LEP, and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.<sup>4</sup> Therefore, an LDSS must provide children and families of limited English proficiency free and timely language assistance, including oral interpretation and translation of vital documents.<sup>5</sup> For language assistance resources, see [ocfs.ny.gov/main/Language Assistance Resources.asp](https://ocfs.ny.gov/main/Language_Assistance_Resources.asp).

### 5. Sexual orientation, gender identity, and gender expression

Everyone has a sexual orientation, gender identity, and gender expression (SOGIE). Like other characteristics of identity, such as race, religion, and national origin, SOGIE can be a source of pride and connect a person to a wider community.

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<sup>3</sup> OCFS. "Regulations Prohibiting Discrimination and Harassment in Child Welfare and Youth Programs" (16-OCFS-ADM-02)

<sup>4</sup> U.S. Department of Health and Human Services. (n.d.) "Guidance regarding Title VI prohibition against national origin discrimination affecting Limited English Proficient persons," accessed at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html>

<sup>5</sup> OCFS. "Provision of Services to Persons with Limited English Proficiency (LEP)" (16-OCFS-INF-05)

SOGIEs develop in a positive manner when people are provided a safe and respectful environment. OCFS “seeks to promote the provision of services in programs that are licensed, operated, or overseen by OCFS in ways that are supportive of a person’s safety, development, and dignity and that are free from discrimination or harassment based on SOGIE.”<sup>6</sup>

OCFS has provided several tools to assist caseworkers supporting and providing services to youth in care who have non-traditional SOGIEs:

- The [SOGIE Terms Desk Aid](#) includes definitions of terms related to sexual orientation and gender identity.
- [SOGIE Development Across the Lifespan](#) provides information on SOGIE related to human development.
- [SOGIE Quick Tips](#) includes best practices on how to respect and respond to children, youth, and adults with diverse SOGIE.
- [A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children](#) can be ordered or downloaded from the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).

LDSS and VA staff should affirm the SOGIE of the children in care whom they serve and be trained to:<sup>7</sup>

- Consistently enforce policies prohibiting teasing, bullying, harassment, or violence on the basis of actual or perceived SOGIEs.
- Know the differences between sex, gender identity, gender expression, and sexual orientation.
- Be familiar with SOGIE terms and how to use them appropriately, keeping in mind that SOGIE terms are subject to change over time.
- Never presume the sexual orientation or gender identity of others.
- Respectfully initiate conversations with children, youth, and adults about their SOGIE with the goal of identifying who might need SOGIE-specific services (this could include connecting a child or youth with a local LGBTQ pride center if available).
- Be prepared to meet the needs of children, youth, and adults as whole people with complex identities (for example, a youth who is gay, Latino, and sighted may have different needs than an adult who is transgender, African-American and blind).
- Navigate SOGIE disclosure. The only way to know other people’s sexual orientation or gender identity is if they tell you. Disclosure is a very personal choice. Children, youth, and adults may not feel comfortable disclosing their SOGIE out of fear of

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<sup>6</sup> OCFS (2016). “Sexual Orientation, Gender Identity, and Gender Expression (SOGIE)” ([16-OCFS-INF-10](#))

<sup>7</sup> Ibid.

- rejection and/or lack of safety. A person is more likely to disclose their sexual orientation or gender identity to staff when they are in an affirming environment.
- Protect SOGIE confidentiality. As with other case-sensitive information, without a client's permission, staff must keep SOGIE information confidential. Every person who chooses to disclose SOGIE information to staff should be informed about how this information will be used. If someone discloses to staff, staff should acknowledge the disclosure. Staff should also confirm whether there are others to whom the person has or has not disclosed, since a person may wish to disclose his/her SOGIE to some people but not to others.
  - Educate and support parents, guardians, and families. Help them to understand that sexual orientation and gender identity are not a choice.<sup>8</sup>

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<sup>8</sup> Ibid.

## B. Health care services

Children in foster care can have a wide variety of service needs including emotional, psychological, behavioral, developmental, and health-related issues. The trauma that children in care may have experienced which resulted in removal or experienced from being removed from their home can have profound effects on their mental and physical health, and their capacity to form meaningful attachments.

“Many infants and toddlers may need early intervention to help them achieve their developmental milestones. Some older children may not have attended school regularly prior to their removal from their homes. It is also common for children to have peer-related socialization issues as they may not have had the proper guidance or opportunities to socialize with other children.”<sup>1</sup> With proper support and effective services, children placed in foster care can overcome these challenges and live safe and happy lives.

This following information is intended to provide a summary of health care services available to children and youth in foster care. For detailed information, please refer to these OCFS publications:

- [Working Together: Health Services for Children in Foster Care](#)
- [A Medical Guide for Youth in Foster Care](#)

### 1. Health care coordination

“In child welfare, the overall purpose of health care coordination is to coordinate children’s health care needs and services within the context of foster care placement and agency efforts to enhance the safety and well-being of children and plan for their permanency. As such, health care coordination plays a supportive role in service planning and permanency planning for children – a role that is increasingly valued as children come into placement with multiple physical, emotional, and developmental needs.”<sup>2</sup>



#### **Practice Tip: Documenting health care services in CONNX**

The Health Services Module in CONNX allows the child’s case manager, case planner, agency nurse, or health care coordinator to access the most critical health information for the child. It is not intended to be a comprehensive health record or a substitute for the medical records maintained by the LDSS, the VA, or the child’s medical provider.

Entering and updating the following health-related information in the Health Services Module is required for all children in foster care and all children in OCFS custody placed in an authorized agency. Required fields should be completed as soon as the documentation is received from the provider.

- Child Health Information
- Clinical Appointments
- Early Intervention (children under age 3)
- Biological Family Health

Source: [Working Together: Health Services for Children in Foster Care](#), Chapter 8, Section 4

<sup>1</sup> Malek, C. (2011). “Understanding the Unique Needs of Children in Foster Care,” *Building Blocks*, December 2011, p. 42

<sup>2</sup> OCFS. “Health Care Coordination for Children in Foster Care: Approaches and Benefits” ([09-OCFS-INF-01](#)).

Health care coordination can include:

- Collecting information on a child's and family's medical history
- Establishing and maintaining an up-to-date medical file
- Obtaining medical consents, if necessary
- Scheduling and overseeing assessments and appointments
- Obtaining any necessary follow-up evaluations and services
- Obtaining any needed documentation
- Recording current and ongoing health status activities
- Establishing relationships with services providers
- Coordinating and monitoring health services
- Communicating results of assessments to the caseworker, foster parents, parents and youth if appropriate
- Educating child, birth parents, guardians, and foster parents about a child's health needs, as authorized
- Coordinating treatment team meetings with the caseworker, foster parents, parents and child if appropriate
- Facilitating health goals in the child's FASP
- Compiling information for the court
- Communicating with schools
- Providing a medical transition or discharge plan when the child is moved to another foster care setting or is discharged from care<sup>3</sup>

## 2. Health Home Serving Children Program

Health Home Care Management is an additive service that complements the fundamental safety, permanency, and well-being activities performed by staff of the LDSS and VA. New York State's Health Home Serving Children Program includes six core services:

1. Comprehensive care management
2. Health promotion and care coordination
3. Comprehensive transitional care
4. Patient and family support
5. Referral to community and social support services
6. Use of health information technology to link services

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<sup>3</sup> Ibid.

Children who continue to meet eligibility requirements for the Health Home Serving Children Program at discharge from foster care may remain in the Health Home Serving Children Program post discharge from foster care for as long as the child continues to meet the eligibility criteria.

LDSSs and VAs are encouraged to refer all potentially eligible children in foster care to the Health Home Serving Children Program when there is a reason to believe the child is eligible. LDSSs are specifically required to refer potentially eligible children to this program in preparation for their discharge from foster care. In order for the LDSS or the VA to make the referral, it must have the legal authority to consent to routine medical care on behalf of the foster child through statute, court order, or delegation of authority from a parent or legal guardian.<sup>4</sup>

Health Home Serving Children Program eligibility and appropriateness criteria are as follows:

1. The child must be enrolled in Medicaid.
2. Medicaid members eligible to be enrolled in a Health Home must have
  - a. Two or more chronic conditions or
  - b. One single qualifying chronic condition:
    - i. HIV/AIDS or
    - ii. Serious Emotional Disturbance (SED) or Complex Trauma.
3. The Medicaid members must be appropriate for the intensive level of care management services provided by the Health Home. The child must be assessed and found to have significant behavioral, medical, or social risk factors to deem them appropriate for the Health Home Serving Children Program. Assessing whether a child is appropriate for Health Homes includes determining if the child:
  - a. Is at risk for an adverse event (e.g., death, disability, inpatient or nursing home admission, mandated preventive services, or out of home placement);
  - b. Has inadequate social/family/housing support, or serious disruptions in family relationships;
  - c. Has inadequate connectivity with the healthcare system;
  - d. Does not adhere to treatments or has difficulty managing medications;
  - e. Has recently been released from incarceration, placement, detention, or psychiatric hospitalization;
  - f. Has deficits in activities of daily living, learning or cognition issues; or
  - g. Is concurrently eligible or enrolled, along with either their child or caregiver, in a Health Home.

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<sup>4</sup> OCFS. "Health Home Referral Requirements for Children in Foster Care" ([18-OCFS-ADM-14](#))

More information on the Health Home Serving Children Program eligibility, including definitions of Serious Emotional Disturbance and Complex Trauma, is available at: [https://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/index.htm](https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/index.htm)

### 3. Bridges to Health (B2H)

The Home and Community-Based Services Medicaid Waiver Program or “Bridges to Health” (B2H) is another mechanism for providing better service coordination for children in foster care. B2H consists of three waivers – B2H for children with serious emotional disturbances (B2H SED), B2H for children with developmental disabilities (B2H DD), and B2H for medically fragile children (B2H MedF). These programs are designed to provide community-based health care services and supports to children in foster care and to those who have been discharged from foster care while in one of the three B2H waivers.<sup>5</sup>

The Health Care Integration Agency (HCIA) representative for an LDSS or VA initiates waiver services and conducts baseline assessments after the child is enrolled in the program. The HCIA is required to:

- Provide the child/medical consentor, and caregiver with contact information for each agency involved in the case;
- Provide a copy of the Preliminary Individualized Health Plan (IHP) to the WSP staff to make them aware that services may begin as stipulated in the Preliminary IHP; and
- Complete the Child and Adolescent Needs and Strengths B2H (CANS B2H) instrument within 30 days of enrollment.

A child must be in foster care at the time the waiver application is submitted, but once approved, the child can receive services until the age of 21, as long as they continue to meet waiver eligibility. In order to be eligible, the child must meet all of the following criteria:

- Be in the custody of the commissioner of a LDSS or the commissioner of OCFS
- Be Medicaid eligible
- Have an appropriate and documented qualifying diagnosis of Serious Emotional Disturbance (SED), Developmental Disability (DD), or Medical Fragility (MedF)
- Be eligible for admission to a medical institution and assessed to meet the Level of Care criteria for one of the three waivers in the B2H Waiver Program
- Be willing to enroll in the B2H Waiver Program and live in an environment where caregivers are willing to cooperate and support the child as a B2H waiver participant (a residence of 12 beds or less is considered a qualified setting for receiving waiver services)
- Be able to benefit from services offered through the B2H Waiver Program

<sup>5</sup> OCFS. [Bridges to Health: Home and Community-Based Services Medicaid Waiver Program Manual](#).

- Be able to be cared for in the community if provided access to B2H Waiver services
- Have had the Application for Enrollment Packet completed on their behalf
- Choose to participate in the B2H Waiver Program rather than reside in a medical institution
- Cannot be married<sup>6</sup>

B2H program service providers offer the following support services to supplement foster care and Medicaid state plan programs:

- Health care integration
- Family and caregiver supports and services
- Skill building
- Day habilitation
- Special needs community advocacy and support
- Pre-vocational services
- Supported employment
- Planned respite
- Crisis avoidance, management and training
- Immediate crisis response services
- Intensive in-home supports
- Crisis respite
- Adaptive and assistive equipment, and
- Accessibility modifications<sup>7</sup>

For more information on the B2H program, including applications, eligibility, and B2H service providers, refer to <http://ocfs.ny.gov/main/b2h/>.

#### 4. Medical consent

Depending on the basis for the child being placed into foster care, it may be necessary for the LDSS to obtain consent from a child's parent(s) or guardian(s) or to obtain court authorization, before the LDSS may authorize foster parents to obtain routine medical care. Exceptions are when a child has been taken into protective custody pursuant to Article 10 of the FCA, adjudicated as an abused, neglected or destitute child or as a juvenile delinquent or when the LDSS has assumed guardianship of the child due to voluntary surrender or termination of parental rights [SSL §383-b and FCA §355.4]. When one of these exceptions

<sup>6</sup> Ibid., pp. 1-7 & 2-2.

<sup>7</sup> Ibid., p. 7-3

applies, the LDSS may authorize the foster parents to consent to routine medical care for the foster child. Alternatively, the LDSS may reserve that right to itself. If the LDSS reserves that right, it should develop a procedure for foster parents to use in obtaining consent for routine medical care for the foster children in their care.

Foster parents, including kinship foster parents, are not authorized to give consent for medical care because of the lack of statutory authority to do so. If approved by the local Early Intervention Official/Designee, foster parents may serve as surrogate parents for children in the Early Intervention Program and consent to early intervention services.<sup>8</sup>

A relative may be able to consent to medical services of a child not in foster care if:

- The relative has an order of custody for the child *and* is authorized by court order or is designated in writing as a person in parental relationship to the child by the parent.
- The relative has been granted legal or permanent guardianship [FCA §661(b)].

When the relative either has guardianship or custody, the relative also can enroll the child in an employer-based health insurance plan if the relative has an order of custody from a court [FCA §657].

#### **a. Health records and family medical history**

Prior to accepting the child into foster care or within 10 days of admission into care, the LDSS must request authorization from the child's parent or guardian for release of the child's medical records. Diligent efforts must be made to obtain the child's medical records by submitting a written request along with the appropriate authorization to medical providers known to have treated the child. If LDSS cannot obtain authorization from the parents, the LDSS Commissioner may authorize the release of the child's medical records. Receipt of records must be documented in the case record [18 NYCRR 441.22 (e)].

Pertinent health information must be provided to foster care providers when a child is placed in care. See [Chapter 8](#) of this manual, "Recruiting and Supporting Foster Families."

There is no specified time frame to receive family medical history, nor is the parent or guardian of the child legally compelled to provide family medical history. The assistance of the court may be requested, however, if a serious medical condition requires knowledge of the family medical history. It is preferable to acquire family medical history from the child's parent or guardian with documentation from the family medical provider.

#### **b. Initial evaluation and treatment**

Prior to accepting a child into foster care in cases of voluntary placement, or within 10 days after admission into foster care in emergency or court-ordered placements, the LDSS or VA must request authorization in writing from the child's parent or guardian for routine medical and/or psychological assessments, immunizations, and medical treatment; and for emergency medical or surgical care in the event that the parent or

<sup>8</sup> OCFS. (2009). [Working Together: Health Services for Children in Foster Care](#).

guardian cannot be located at the time such care becomes necessary. Such authorization must become a permanent part of the child's medical record. If written authorization cannot be obtained from the child's parent or guardian in cases of involuntary placements, the LDSS commissioner may provide written authorization where permitted in accordance with Social Services Law for abused, neglected and destitute children and juvenile delinquents in accordance with the Family Court Act [[SSL §383-b](#), [FCA §355.4](#) and [18 NYCRR 441.22\(d\)](#)].

If the child is placed in the custody of a LDSS commissioner as a PINS, or is placed voluntarily by the parents/guardian pursuant to [SSL §384-a](#), only the parents or guardian can consent to medical care. Such parent/guardian may delegate such authority to the LDSS. If the parent/guardian will not consent to medical care or delegate authority to routine medical care, a court order must be sought.<sup>9</sup>

In addition, if a youth in foster care is married, is 18 years of age or older, or is the parent of a child, he/she may give consent to any medical care [[Public Health Law §2504\(1\)](#)]. In such cases, consent from the parent or guardian should not be sought, as the parent or guardian cannot give effective consent.

### **c. Emergency care**

If a child in foster care needs emergency care and the child's parent or guardian has not provided consent for emergency care, the absence of written consent should not delay the provision of emergency or urgent care [[Public Health Law §2504\(4\)](#)]. The LDSS or VA must inform foster parents of procedures for obtaining routine care and care for medical emergencies or illnesses [[18 NYCRR 441.22\(j\)\(ii\) and \(iii\)](#)].

### **d. Non-routine care**

If the child requires non-routine care, such as elective or mental health care not provided as a part of primary care, medical providers generally will seek a higher level of consent, known as informed consent. Informed consent implies that the parent or guardian has had the opportunity to ask the medical provider questions and understands all the risks, benefits and alternatives of treatment. The LDSS or VA should attempt to get consent from the child's parent/guardian for both routine and non-routine care unless parental rights have been surrendered or terminated, or the child is 18 years of age or older, married or a parent. If the child's parent/guardian will not or cannot consent, as with



#### **Practice Tip:**

#### ***Accompanying children to appointments***

Foster parents are expected to transport and accompany foster children to their routine appointments, including medical appointments. Foster parents know the children's needs, and can be a comforting and familiar presence, especially during stressful appointments.

Birth parents should be encouraged to be present for medical appointments, if appropriate and practical.

Source: [New York State Foster Parent Manual](#)

<sup>9</sup> Ibid.

consent for routine medical care, the authority of the LDSS to provide informed consent is dependent upon the legal authority under which the child was placed into foster care.<sup>10</sup>

Informed consent is usually required for:

- Hospitalization
- Dispensing of any psychiatric medication
- Any procedure that requires anesthesia
- Surgery
- Invasive diagnostic procedures or treatments

## 5. Management of chronic conditions

Children in foster care may have serious, ongoing medical conditions such as asthma, diabetes, seizures, or vision or hearing problems that require ongoing monitoring and treatment. The LDSS or VA should work with the child’s parent or guardian to develop a long-term plan to manage the chronic illness, and also obtain informed consent from the parent or guardian. The LDSS is responsible for arranging any follow-up care recommended by the primary care physician [18 NYCRR 441.22(g)], as well as for providing glasses, hearing aids, prosthetics, or other adaptive devices.

## 6. Preventive care

Preventive health care promotes a healthy life for all children and adults; therefore, to achieve health and wellness for children in foster care, each child is required to have periodic medical assessments (well-child visits) with a trained medical professional [18 NYCRR 441.22(f)]. Well-child visits should occur whether or not the child is being treated by a specialized physician for a specific illness.

The New York State Medicaid program has adopted the well-child visit schedule endorsed by the American Academy of Pediatrics (AAP). Due to the greater health needs of children in foster care, OCFS recommends that children in foster care receive well-child exams at the following ages:<sup>11</sup>

4 to 5 days	9 months	3½ years
1 month	12 months	4 years
2 months	15 months	4½ years
3 months	18 months	5 years
4 months	24 months	5½ years
5 months	30 months	6 years

<sup>10</sup> OCFS. (2009). [Working Together: Health Services for Children in Foster Care](#).

<sup>11</sup> OCFS. (2009). [Working Together: Health Services for Children in Foster Care. Chapter 2, “Preventive and Ongoing Health Care.”](#)

- | 6 months | 3 years | Annually 7 to 21 years |
|----------|---------|------------------------|
|----------|---------|------------------------|
- Well-child visits should include:<sup>12</sup>
- Clinical examination that follows current recommended medical practice and is consistent with the needs of the child as determined by the child's physician
  - Immunizations consistent with current NYS Department of Health recommendations
  - Periodic screening tests
  - Health education
  - Review and update of treatment plan [[18 NYCRR 441.22\(f\)](#)]
  - After each well-child visit, the caseworker is responsible for:
    - Reviewing the medical exam record to determine any need for further treatment, medication changes or referrals
    - Contacting provider for information on follow up care
    - Offering to assist the foster parent with follow up care and transportation to any referral visits
    - Encouraging the provider to regularly communicate with LDSS or VA about follow-up, referrals, missed appointments, and other important information<sup>13</sup>

Well-child visits must be documented in the case record [[18 NYCRR 428.3\(b\)\(2\)](#)] and [441.22\(k\)](#)].

## 7. Dental services

Routine dental care must be provided to children while they are in foster care. This includes periodic dental exams as recommended [[18 NYCRR 441.22\(f\)\(2\)\(viii\)](#)] and [18 NYCRR 507.1\(c\)\(2\)](#)] and dental screenings and referrals [[18 NYCRR 441.22\(f\)\(2\)\(viii\)](#)] and [18 NYCRR 507.1\(c\)\(3\)\(vii\)](#)]. The LDSS must assist in the scheduling of dental visits and transportation to dental visits, if needed [[18 NYCRR 507.1\(c\)\(5\)](#)] and consult with dentists, as appropriate, regarding the significance of information and findings [[18 NYCRR 507.1\(c\)\(6\)](#)].

Dental services include:

- Initial exam, preventive services, and sealants on permanent molar teeth at the time of entry into care.
- Ongoing routine dental care for children age 3 and older (Note: NYC Administration for Children's Services (ACS) requires an exam by a dentist at age 2):
  - Preventive care every 6 months

<sup>12</sup> Ibid.

<sup>13</sup> OCFS. "Foster Care: Medical Services for Children in Foster Care" ([90-ADM-21](#))

- Examination by dentist annually [[18 NYCRR 441.22\(f\)\(2\)\(viii\)](#)].
- Sealants on newly erupted molars at preventive visits.
- Ongoing restorative care to promptly address every problem identified:
  - Timely access to restorative care
  - Fillings
  - Root canals
  - Replace missing and damaged teeth
  - Periodontal care for gum disease
- Immediate access to dentist or oral surgeon for pain or dental trauma.
- Immediate access to effective medication to relieve pain.
- Orthodontics based on NYSDOH Physically Handicapped Children’s Program (PHCP) standards for severe handicapping dental conditions<sup>14</sup>

## 8. Reproductive health services

Youth in foster care ages 12 and older, and younger children who are known to be sexually active, need age-appropriate education and counseling on their reproductive rights and on reproductive health services, including counseling on sexuality, pregnancy prevention, family planning and sexually transmitted diseases (STDs).<sup>15</sup>

Reproductive health services may be provided either directly or through the purchase of services including social, educational, and medical family planning services [[18 NYCRR 463.3 to 433.5](#)]. Family planning services must be provided within 30 days to a youth in foster care who requests them, is over the age of 12, or is known to be sexually active [[18 NYCRR 463.2\(b\)\(2\)](#) and [18 NYCRR 507.1\(c\)\(9\)](#)]. Any such offer may be made orally as long as it is also made in writing (which may be by letter or a brochure) and must be done as part of the child’s service plan [[18 NYCRR 441.22\(l\)\(2\)](#) and [463.2\(b\)\(2\)](#)]. If requested, such services must be provided. The case record must document that the information was provided to the youth as well as noting any services provided to the youth.<sup>16</sup>

### a. Notification to foster parents



#### **Practice Tip:** *Keeping information secure*

Any documentation related to reproductive health should be kept in the secure health notes section of the health module in CONNECTIONS. Reproductive health information should not be included in the permanency hearing report.

Source: “Reproductive Health and Services for Youth in Foster Care” ([11-OCFS-ADM-09](#)).

<sup>14</sup> OCFS. (2009). [Working Together: Health Services for Children in Foster Care](#), pp. 2-5 and 2-6

<sup>15</sup> OCFS. “Reproductive Health and Services for Youth in Foster Care” ([11-OCFS-ADM-09](#)).

<sup>16</sup> Ibid.

LDSSs and VAs must notify foster parents who are caring for youth ages 12 and older of the availability of reproductive health services. This notification must occur within 30 days of placement and annually thereafter [18 NYCRR 441.22(l)(1) and 463.2(b)(1)]. A copy of this notice, including the date it was given, is to be placed in the youth's medical and case record.

### **b. Consent for reproductive health services**

In New York State, minors may consent to their own health care in the area of reproductive health if the treating physician determines that the minor has the capacity to consent. Capacity to consent means an individual's ability to understand and appreciate the nature and consequences of a proposed health care service, treatment, or procedure and to make an informed decision about the service, treatment, procedure, or disclosure of health information.<sup>17</sup>

This includes health care for family planning services, gynecological exams, Papanicolaou (Pap) tests, contraceptives (including emergency contraceptives), pregnancy testing, pregnancy options counseling, counseling on sexual decision-making, abortion, and treatment for sexually transmitted diseases (STDs) and the human immunodeficiency virus (HIV). A minor who is married or the parent of a child may give consent for services for himself/herself [Public Health Law (PHL) §2504].

### **c. Types of reproductive health services**

OCFS has identified several types of reproductive health services that must be provided to youth in care ages 12 and older or to children younger than 12 who are known to be sexually active. These include, but are not limited to the following:<sup>18</sup>

*Reproductive health education and counseling* on sexuality, pregnancy prevention, family planning, STDs).

*Gynecological care* for females at the onset of puberty, including annual exams. Routine immunization against the human papillomavirus (HPV) for female youth ages nine and older, regardless of sexual activity level, is strongly recommended in policy.

*Pregnancy testing* must be provided to a female youth in foster care whenever a pregnancy is reasonably suspected due to late or missed menses or for some other reasons. If the youth's pregnancy test is positive or it comes to the attention of a foster parent or other agency staff that a youth is pregnant, the case manager must be notified within 24 hours.

*Pregnancy counseling* regarding all available options must be provided to a pregnant youth as soon as possible, but no more than one week after pregnancy diagnosis. Within two weeks after the pregnancy diagnosis and prior to any termination occurring, the case manager or a designee must interview the pregnant youth to confirm that she has received all the information she feels she needs to make an informed decision about her pregnancy and has not been coerced, persuaded, or improperly influenced to maintain

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<sup>17</sup> Ibid.

<sup>18</sup> OCFS. "Reproductive Health and Services for Youth in Foster Care" ([11-OCFS-ADM-09](#)).

or terminate her pregnancy. The youth must also be offered the opportunity to meet with a health care provider, counselor, and/or her attorney if she wishes to additional assistance in the decision-making process. If she chooses to terminate the pregnancy, appropriate termination services must be made available to her as soon as possible.

*Prenatal and postpartum care* must be provided to youth who choose to continue their pregnancies. The first prenatal care appointment should occur as soon as possible after the youth has decided to continue her pregnancy, preferably within one week. The caseworker should monitor the youth's medical care during and after the pregnancy to verify that the youth is attending recommended appointments. No medical information regarding the youth's pregnancy may be disclosed to the youth's biological or foster parents without the youth's written consent.

*Contraception and family planning services* must be provided to youth in foster care regarding the impacts of sexual activity, such as unintended pregnancies and STDs. Contraception and family planning services must be provided by trained professionals and referrals should be made within 30 days of the youth's request. If a youth has had unprotected sexual intercourse, he/she must be offered emergency contraception within 72 hours of the intercourse.

*Routine STD testing* is recommended for youth in foster care who are sexually active. Testing should also be considered when a child returns from an absence without consent, if there are concerns that sexual activity has occurred. If a youth in foster care contracts a STD, the caseworker must seek out care from a trained, health care professional [PHL §2305].

## 9. HIV testing

Each child in foster care must be assessed for risk factors related to HIV infection in accordance with the standards set forth in 18 NYCRR 441.22(b) and 18 NYCRR 507.2(a), as well as the child's ability to consent to HIV testing [18 NYCRR 441.22(b)(1)]. If it is determined that the child has one or more of the risk factors for HIV infection, designated staff of the LDSS or VA must then take the steps set forth in 18 NYCRR 441.22(b)(4). If a child tests positive, the LDSS or VA must:

1. Arrange for any additional required testing
2. Refer the youth for appropriate medical services
3. Provide or arrange for other supports such as psychological services for the child and the child's biological and/or foster family, as appropriate [18 NYCRR 441.22(b)(7)]

Any HIV testing results and related care must be documented in the medical history section of the child's case record in CONNX [18 NYCRR 428.3(b)(2)(ii), 18 NYCRR 441.22(k)(5)]. The following people must be notified of the child's HIV testing results [18 NYCRR 431.7(a)(4)]:

- The child's certified or approved foster parents [SSL §373-a; 18 NYCRR 357.3(b)(2)]

- The child’s prospective adoptive parents [SSL §373-a, 18 NYCRR 421.18(m) and 357.3(b)(3)]
- Another authorized agency, if the care of the child is transferred to that agency [PHL §2782(1)(h); 18 NYCRR 357.3(b)(1)]
- The child, if discharged to his/her own care [SSL §373-a; 18 NYCRR 357.3(b)(4)]
- The parents or guardian of the child, if the child has the capacity to consent and has signed a written release for such disclosure [18 NYCRR 357.3(b)(5)].

## 10. Mental health services

Children in foster care who are age three and older must have an initial mental health assessment, recommended to be completed within 30 days of placement. If any mental health needs are identified during the initial mental health assessment, the child must receive appropriate mental health care from professionals including diagnosis, treatment, and services. Psychiatric, psychological, and other essential services must be made available appropriate to the needs of the children in care [18 NYCRR 441.15].<sup>19</sup>

Children in care should receive ongoing mental health services, rather than waiting for a mental health crisis to occur. Routine care also allows the mental health professional to develop a rapport with the child, improving the quality of service.

Mental health services encompass various techniques or therapeutic approaches, including interaction with the individual child, the birth parents, and the foster family. It is helpful for caseworkers, foster parents, and birth parents to know what to expect when a child receives mental health evaluation and treatment. Mental health treatment services include various therapeutic approaches to individual and family counseling:

*Verbal psychotherapy, or “talk therapy.”* The therapist meets with the child in individual or family sessions

*Interactive psychotherapy, or “play therapy.”* The child explores issues through play with toys or other items

*Cognitive-behavioral therapy (CBT).* The therapist helps the child see the connections between his/her thinking and behavior

*Group therapy.* Adolescents in particular may be more responsive with peers in a group therapy setting

Additional types of treatment include dialectical behavior therapy (DBT), family therapy, interpersonal therapy (IPT), psychodynamic therapy, behavior therapy, and expressive therapies (e.g., art and music). Depending on the diagnosis, psychiatric medication may be prescribed in addition to psychotherapy or other individual or group services. Other

<sup>19</sup> OCFS. *Working Together: Health Services for Children in Foster Care*. Chapter 1, Section 3

additional related treatment may include substance abuse treatment services, when needed.<sup>20</sup>

For more information on mental health services for children, refer to the New York State Office of Mental Health at <https://omh.ny.gov/omhweb/bho/childrensmc.html>. Documentation of mental health services should be captured in the case record [18 NYCRR 428.3(b)(2)].

## 11. Suicide prevention

Young people who are considering suicide often give clues about their intentions to their friends, teachers, foster parents, and other adults in their lives. It is imperative that child welfare staff be aware of indicators that a youth may be considering suicide. The American Foundation for Suicide Prevention lists the following warning signs:<sup>21</sup>

- Youth talk about being a burden, feeling trapped, experiencing unbearable pain, having no reason to live, and killing themselves
- Youth exhibit behaviors such as:
  - Increasing their use of drugs or alcohol
  - Researching online for means or materials to kill themselves
  - Acting recklessly
  - Withdrawing from normal activity
  - Isolating themselves
  - Sleeping too much or too little
  - Saying goodbye to people
  - Giving away meaningful possessions
- Youth display moods such as aggression, depression, irritability, humiliation, or anxiety

Certain risk factors can also increase the likelihood that a youth may choose to take his/her life. Many of these risk factors are prevalent in the families served by the child welfare system and can include:<sup>22</sup>

- Mental health conditions
- Substance abuse disorders
- Serious or chronic health conditions
- Stressful life events such as a death, or prolonged stress factors such as bullying
- Access to lethal means such as firearms or drugs

<sup>20</sup> Ibid. Chapter 2, Section 4

<sup>21</sup> American Foundation for Suicide Prevention. (n.d.) "Risk Factors and Warning Signs," accessed at <https://afsp.org/about-suicide/risk-factors-and-warning-signs/>

<sup>22</sup> Ibid.

- Exposure to another person’s suicide
- Previous suicide attempts or family history of suicide attempts

Caseworkers should be familiar with agency procedures for handling suicidal ideation (thinking about or a preoccupation with suicide) or attempts and be trained in screening for the risk of suicide, recognizing suicidal behaviors and prevention, and referring to mental health services.

For more resources on suicide prevention, visit the New York State Office of Mental Health website at [https://www.omh.ny.gov/omhweb/suicide\\_prevention/](https://www.omh.ny.gov/omhweb/suicide_prevention/).

## 12. Substance use disorder

An initial substance abuse assessment should take place within 45 days of placement for children age 13 and older, and younger if indicated. All children in foster care should be assessed for family history of substance abuse, history of their own drug and alcohol use, and other risk-related behaviors. Recommended by the American Academy of Pediatrics’ Committee on Substance Abuse, the CRAFFT Screening tool is an example of a screening tool that can be used with youth in care.<sup>23</sup> For more guidance on screening tools, refer to the New York State Office of Alcohol and Substance Abuse Services (OASAS) at [www.oasas.ny.gov](http://www.oasas.ny.gov).

If a child or youth is identified as having a substance abuse-related problem, he/she must receive a complete assessment and services from a trained professional in the substance abuse treatment field. OASAS licenses preventive and treatment programs in a variety of settings. For guidance on accessing treatment for children in care, visit <https://www.oasas.ny.gov/treatment/index.cfm>.

### a. Drug screening

The use of urine tests may be done for drug screening in any of the following circumstances:<sup>24</sup>

- The court has ordered a drug screen or test
- The child has consented to the screen as a condition of participation in an OASAS-approved or licensed treatment program
- A medical professional or certified alcohol and substance abuse counselor (CASAC) has directed that the screen should be done
- A medical professional or CASAC has reason to believe a child is unlawfully under the influence of a substance, and the medical professional or CASAC has permission to test from LDSS commissioner, VA executive director, or designee

<sup>23</sup> The Center for Adolescent Substance Abuse Research. (n.d.) “The CRAFFT Screening Tool,” accessed at <http://craftt.org/>

<sup>24</sup> NYS Office of Children and Family Services. (2009). *Working Together: Health Services for Children in Foster Care*.

**b. Signs of substance use disorder**

All child welfare staff and foster parents should be trained in how to identify signs of substance use disorder in the youth in their care. Some signs and symptoms of substance use include physical signs such as:<sup>25</sup>

- Loss or increase in appetite, unexplained weight loss or gain
- Inability to sleep, extreme laziness
- Smell of substance on breath or clothes
- Nausea, vomiting, sweating, shakes
- Red, watery eyes; pupil dilation; blank stare
- Slurred speech

Behavioral signs could include changes in:

- Attitude and personality
- Friends and hangouts
- Activities, hobbies or sports
- Achievement in school or work performance
- Behavior (e.g. isolation, secretiveness)
- Mood (e.g. irritability, nervousness, giddy)

Children in care initially may not want to admit to or acknowledge that they are using or abusing drugs or alcohol. This makes it difficult for caseworkers to persuade a child that he/she might need an assessment or treatment. If it is suspected that a child is using or abusing drugs and/or alcohol, a caseworker should:<sup>26</sup>

- Not avoid the problem
- Approach the child when he/she is not currently using, if possible
- Review family history and the child's health history
- Not engage in emotionally charged behavior during a discussion
- Interview birth and foster parents separately to help determine whether there is a need for assessment
- Interview the child privately
- Prepare the child for assessment and/or treatment, if he/she agrees

<sup>25</sup> New York State Office of Alcoholism and Substance Abuse Services. (2013). "How to Know? I Think My Child is Using Alcohol and/or Drugs," accessed at <https://www.oasas.ny.gov/publications/pdf/SafeMedNY-1089.pdf>

<sup>26</sup> Project Know: Understanding Addiction. (n.d.). "How to Help an Addict or Alcoholic Child," accessed at <http://www.projectknow.com/research/how-to-help-an-addict-or-alcoholic-child/>.

As with other types of services, all casework efforts related to the child's substance abuse issues must be documented in the case record [18 NYCRR 428.3 (b)(2)].

### 13. Gambling addiction treatment

Gambling can be a hidden addiction for youth in care, and can go undetected until there are serious physical, financial, and emotional consequences. Youth with impulse control and risk-seeking behavior, among other disorders, are at a higher risk.

The regulations of the New York State Gaming Commission specify that youth under the age of 18 are not allowed to place bets at video lotteries, on horse racing, or in casinos. There are ways however, for youth to gamble online or on informal games in their schools or neighborhoods. Some signs that a youth might have a gambling addiction include:<sup>27</sup>

- Excessive talk about gambling
- Friendships with youth who are known to gamble
- Frequent requests for money
- A history of lying and being in trouble with the law
- Few close personal relationships
- Few interests outside of gambling

For information on services to for youth with problem gambling, refer to the New York State Office of Alcohol and Substance Abuse Services (OASAS) at <https://www.oasas.ny.gov/gambling/youth.cfm>. Treatment must be documented in the case record [18 NYCRR 428.3 (b)(2)].

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<sup>27</sup> KidsHealth. "Gambling Addiction" accessed at <http://kidshealth.org/en/teens/gambling.html>.

## C. Educational services

Studies have shown that children and youth in foster care are much more likely to struggle in school and are less likely to graduate from high school than their peers.<sup>1</sup>

A coordinated effort by education agencies and child welfare agencies is necessary to improve the educational outcomes for students in foster care.<sup>2</sup> While a child is in foster care, the LDSS is must take steps to see that the child receives an appropriate education [18 NYCRR 430.12(c)(4)(i)].

### 1. Educational stability

State regulations require LDSSs and school districts to collaborate to minimize disruption in education while a child is in foster care by keeping the child in the same school district in which he/she was registered when entering foster care and with each change in placement, unless it is the best interest of the child to transfer to another district [18 NYCRR 430.11(c)(1)(i)]. Some factors to be considered include:

- Safety concerns
- The child's preference
- Appropriateness of educational programs available in the school
- The child's permanency plan, included expected length of stay in care
- The child's proximity to family, placement with siblings, or kinship foster care
- The child's age, maturity level, and grade level<sup>3</sup>

The child shall be entitled to attend the school of origin or any school that children and youth who live in the attendance area in which the foster care placement is located are eligible to attend, including a preschool, subject to a best interest determination made by the applicable LDSS or VA, for the duration of the child's placement in foster care and until the end of the school year in which such child is no longer in foster care and for one additional



#### **Practice Tip: Information on educational services**

New York State and the federal government have recognized the unique needs of children in foster care by providing guidance and enacting laws to increase educational stability and improve the educational outcomes achieved. The state and federal laws and guidance clarify joint responsibilities of educational and child welfare agencies to continually collaborate so that the provisions are successfully implemented and students in foster care achieve educational stability.

The New York State Education Department (SED) website provides resources for both education staff and human services workers at <http://www.p12.nysed.gov/sss/pps/fostercare.html>

<sup>1</sup> OCFS and NYSED. (2016). "Educational Stability and Transportation Provisions for Students in Foster Care in Title I, Part A as amended in the Every Student Succeeds Act of 2015" ([http://p1232.nysed.gov/sss/documents/FosterCareMemo12-2-16\\_FINAL.pdf](http://p1232.nysed.gov/sss/documents/FosterCareMemo12-2-16_FINAL.pdf))

<sup>2</sup> United States Department of Education. "Students in Foster Care," accessed at <https://www2.ed.gov/about/inits/ed/foster-care/index.html>

<sup>3</sup> OCFS. "New Requirement Regarding Educational Stability of Foster Children" (12-OCFS-ADM-03).

year if that year constitutes the child's terminal year in such building. Similar provisions apply to children who have been placed in foster care in a contiguous state or who are moved from one foster care placement to another [Education Law §3244(2)].

Workers must use [Form LDSS-2999](#) to notify school districts when children are placed in family foster homes, agency boarding homes, or group homes. Form [LDSS-3424](#) must be used to notify school districts of their financial responsibility for children placed in child care institutions or residential care facilities.

The cost of transportation from the foster home to school should not be a factor in an educational placement decision. The LDSS and the local school district must collaborate to develop a clear plan for transportation of the child in foster care so he/she can be maintained in his/her original school district, if it is in the best interest of the child. If the child will continue to attend his/her original school district, the transportation cost will be borne by that school district up to the amount the school district would have spent to transport a student residing within the school district, after which the additional transportation cost is divided equally between the LDSS and the school district. If the child will attend school in the school district in which the child resides while in his/her foster care placement, the cost of transportation will be borne by the school district within which the child resides while in the foster care placement on the same basis as for a resident student in that school district [Education Law §3244(4)].

Federal law requires the school district to designate an official point of contact to work collaboratively with the LDSS. If a change in school district is required, the school district must:

- Enroll the child immediately in the new school, even if education records have not yet been transferred
- Pursue contact between the old and new school to expedite the transfer of records

## 2. Educational records

Local school districts may disclose a student's educational records to an LDSS caseworker without parental consent if the LDSS is legally responsible for the care and protection of the child [20 U.S.C. §1232g(b)(L)].

In addition, the LDSS may consent to the release of the child's school records to an individual or entity engaged in addressing the child's education needs and authorized by such agency to receive such disclosure, provided that the disclosure is consistent with state laws protecting the confidentiality of a student's educational records.<sup>4</sup> Child welfare workers who have access to a child's educational records must take measures to protect the security and confidentiality of those records and may re-disclose the records only as authorized by state and federal law.<sup>5</sup>

Education details and history should be documented in the progress notes in CONNX. Caseworkers must record updated education information about each school-age foster child

<sup>4</sup> OCFS. "NYSED Historical Data for Children in Foster Care" ([16-OCFS-ADM-01](#)).

<sup>5</sup> OCFS. "FERPA Update: The Uninterrupted Scholars Act" ([13-OCFS-INF-06](#)).

in the CONNX Education Module by October 1 of each school year and whenever a school change occurs. The LDSS is required to maintain documentation of:

- The education program in which the child is currently enrolled or will be enrolling
- The date the child completed education, if applicable, or
- Any medical condition that prevents the child from attending school on a full-time basis [18 NYCRR 430.12 (c)(4)(ii)].

To the extent possible, the LDSS or VA must provide a copy of a child's education record at no cost to the child upon discharge to his/her own care. This record includes the names and addresses of the child's educational providers; the child's grade level performance; assurances that the child's placement in foster care took into account proximity to the school in which the child was enrolled at the time of placement; and any other relevant education information concerning the child [18 NYCRR 357.3(j)].

### 3. Special education needs

Special education services for students ages 5 to 21 are accessed through a referral from the local school district or regional special education program. If a caseworker suspects that a child in care may be educationally disabled, the child should be referred to the local school's Committee on Special Education (CSE) for an assessment.

If the child is assessed to need educational support services, the CSE will create an Individualized Education Plan (IEP) for the child including recommended educational services based on the child's needs and assessments. The CSE will regularly hold meetings to continually assess the progress of the child and re-assess the IEP and service needs. The child's parents (if appropriate), foster parents and caseworker are expected to attend the CSE meetings. The child's case record in CONNX must include documentation of [18 NYCRR 428.3(b)(2)(ii)]:

- Educational assessments and reports
- Evaluations indicating educational goals and needs
- CSE recommendations
- Caseworker attendance at CSE meetings

Provisions in the federal Individuals with Disability Education Act (IDEA) [P.L. 101-476] provide students with educational disabilities with certain rights and protections, but also allow foster parents to make decisions regarding educational assessments and services if there is no engaged birth or adoptive parent.

#### ***a. Children with special needs in general education classes***

Section 504 of the Rehabilitation Act of 1973 [P.L. 93-112] allows some students with special needs to remain in the general classroom. Students whose impairments do not directly limit their ability to learn have the right to a free, public education. School districts must provide the necessary accommodations and services so that students can participate as fully as possible in the least restrictive environment and without stigma.

Children can be referred for 504 services directly from the CSE or as the result of an assessment. These services should be documented in the child's case record.

Examples of 504 services or accommodations may include:

- Modifications to a child's schedule
- Preferential seating
- Test taking accommodations
- Classwork/homework modifications
- Elevator pass
- Provision of health-related services such as monitoring blood sugar levels or administering medications

## 4. College and post-secondary vocational training programs

### a. New York State ETV Program

The New York State Education and Training Voucher (ETV) Program helps youth who are transitioning from foster care to receive the education, training, and services necessary to obtain employment. An ETV award will be the lesser of \$5,000 or the total cost of attendance at an institution of higher education minus any other financial resources (e.g., TAP award, Pell Grant and scholarships) available to a youth.<sup>6</sup>

The criteria below describe the *initial* eligibility requirements for the ETV program. An applicant applying for the first time for an ETV award must be:

- Below the age of 21 years old;<sup>7</sup> and
- A U.S. citizen or qualified non-citizen; and
- Enrolled in or attending a post-secondary education or training program at an "institution of higher education" as defined in 20 USC §§1001 and 1002.

In addition, an applicant for ETV must have been:

- In foster care on or after his/her 14<sup>th</sup> birthday and otherwise eligible for services under the Chafee Independent Living program (see [18-OCFS-LCM-07](#)); or
- Adopted or entered kinship guardianship from foster care at age 16 years old or older; or

<sup>6</sup> Foster Care to Success. "New York ETV Program," accessed at <http://www.fc2sprograms.org/new-york/>

<sup>7</sup> A youth participating in the ETV program on the date he or she attains 21 years of age may remain eligible until he or she attains 23 years of age, so long as the youth is enrolled in a post-secondary education or vocational or training program at an institution of higher education, and the youth is making satisfactory progress toward completion of that program. However, in no event may a youth participate in the ETV program for more than five years, whether or not those years are consecutive.

- In the custody of OCFS, attained at least 14 years of age; and placed in non-secure OCFS operated facilities of 25 beds or less (in other words, a youth who is placed in a facility that would allow the youth to be eligible for Title IV-E funding); or
- Juvenile justice youth who is on aftercare status who has attained 14 years of age or older.

If an applicant has previously been determined to be eligible to receive an ETV, and would like to continue to receive an ETV award, the applicant must reapply annually and demonstrate eligibility to continue receiving ETV funding. However, in no event may a youth participate in the ETV program for more than five years, whether or not those years are consecutive.

The criteria described below are the three requirements that must be met in order for youth who have received ETV awards to continue to receive ETV:

- The youth must have previously been determined to be eligible based on the criteria described above.
- The youth must show satisfactory progress toward the completion of the educational or vocational program.
- The youth must be below the age of 23 years old.

***b. Other sources of post-secondary educational support***

Youth who are in or have been in foster care may be eligible to receive post-secondary educational support through sources of funding other than ETV including:

*Higher Education Services Corporation (HESC)* – financial assistance programs, including the New York State Tuition Assistance Program.

*Orphan Foundation of America (OFA)* – scholarships, connections to mentors and internships, and advocacy for adolescents in foster care.

*Vocational and Educational Services for Individuals with Disabilities (VESID)* – vocational counseling and rehabilitation services resulting in employment for youth with disabilities.

*Educational Opportunity Program (EOP) and Higher Education Opportunity Program HEOP* – EOPs are provided by colleges and universities in the State University of New York System, and HEOPs by private colleges and universities. These programs provide access, academic support, and financial aid to students who show promise for mastering college-level work and who otherwise might not be admitted.

*AmeriCorps* – After successfully completing a term of service, an AmeriCorps member becomes eligible to receive an education award which can be used to pay for higher education expenses, including loans. AmeriCorps State & National members engage in a diverse range of service projects at local, regional, and national organizations to address critical community needs of disaster services, economic opportunity, education, healthy futures, environmental stewardship and veterans and military families. AmeriCorps (NCCC) members strengthen communities and develop

leadership skills through direct, team-based service. Teams of young adults, age 18-24, travel across the country to complete projects that meet crucial community needs.

*Job Corps* – a free education and vocational training program administered by the U.S. Department of Labor, which provides youth ages 16 through 24 with vocational and academic training or GED completion.

For additional information on scholarships, vocational education, and tuition waivers available for youth in foster care or youth adopted from foster care, visit the Child Welfare Information Gateway at <https://www.childwelfare.gov/topics/adoption/adopt-people/assistance/>.

When a youth in foster care is attending a college or university away from his/her foster family boarding home, group home, agency boarding home, or institution, the LDSS may make payments to the college or university for room and board. This payment is made in lieu of the payment to the foster parent or VA and does not exceed the amount which would have been paid to a foster parent or VA if the youth was being cared for in the foster home or facility [SSL §398(10)].

## D. Services related to developmental delays

The term child development is used to describe the physical, psychological, and emotional changes that occur in children and youth from infancy to adulthood. It is a continuous process with a predictable sequence, yet development progresses at a different rate for each child.

Families that are involved in the child welfare system are more likely than average to have characteristics that contribute to developmental delays and disabilities. The family may be undergoing major stress related to factors such as domestic violence, lack of housing, and poverty. The warning signs for developmental problems associated with abuse or maltreatment generally vary according to age. For example, at younger ages, maltreated children show impairments in their ability to discriminate different emotions, but these difficulties are not observed at older ages. Older adolescents and young adults who were maltreated as children are more likely to be antisocial.<sup>1</sup>

Most of the people who come in contact with a child during the first three months of life are members of his/her nuclear family. Cognitive and social developments seem to be most affected by:

- Caregivers' self-image, self-esteem, confidence, and emotional responsiveness
- Restrictions and types of discipline imposed on the child
- Language stimulation provided
- Opportunities for exploratory play and appropriate play materials<sup>2</sup>

Physical, mental, and emotional development is controlled by the human brain. As technology has made it possible to scan brain growth and activity, much has been learned about how a child's experiences affect the brain and, consequently, health and well-being.

Life experiences have a major impact on how a child's brain grows and develops during the first three years of life. A newborn's brain has 100 billion nerve cells (neurons). These cells are most active in the brain stem and midbrain, which control basic functions such as eating, sleeping, and crying.

As the child grows older, the majority of brain development occurs in the cerebral cortex, limbic system, and frontal lobes, which regulate emotions, language, social connections, and reasoning. As the brain grows, it creates pathways (synapses) among the neurons, connecting to different parts of the brain. Synapses develop rapidly during the first three years of life – by the time children are three years old, their brains have approximately 1,000 trillion of these crucial connections.<sup>3</sup>

<sup>1</sup> Center on the Developing Child at Harvard University. (2012). "The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain," Working Paper No. 12. Accessed at [www.developingchild.harvard.edu](http://www.developingchild.harvard.edu).

<sup>2</sup> Landers, C. (2006) Consultative Group on Early Childhood Care and Development, UNICEF House, New York accessed at <http://www.ecdgroup.com>

<sup>3</sup> Child Welfare Information Gateway. *Understanding the effects of maltreatment on brain development*, accessed at [www.childwelfare.gov](http://www.childwelfare.gov)

## 1. Assessing developmental disabilities and delays

Caseworkers must assess the developmental status of children in foster care in order to provide services, if needed. A working knowledge of normal child development is essential to accurately assess whether the child's minimum needs are being met, to know whether a child is developmentally able to participate in a verbal interview, and to determine the help the child needs to improve his/her well-being.

The four basic domains of child well-being [identified by OCFS](#) are closely associated with key developmental areas:

1. Cognitive functioning and growth
2. Physical health and development
3. Behavioral/emotional functioning
4. Social functioning

Tools such as the OCFS *Child Development Guide*<sup>4</sup> help to identify the ages at which most children reach certain developmental milestones. These “ages and stages” tools are not, however, precise blueprints that apply to all children. Each child moves at his/her own pace within each stage. If the caseworker or foster parent are concerned about a possible developmental delay, a developmental evaluation administered by a professional, such as a psychologist or a pediatrician, is necessary to confirm a developmental delay or disability.

## 2. Early Intervention Program (EIP)

Children between birth and three years of age may be eligible for participation in the state Early Intervention Program (EIP) because they are experiencing developmental delays or disabilities. Some of these children will be in foster care. EIP offers a variety of therapeutic and support services to eligible children that are ongoing, individualized, based on need, and provided at no cost for children under three years of age.<sup>5</sup>

In order to be eligible for these services, a child must be under the age of three and have been diagnosed with a developmental disability or delay in one or more of the following areas of development: cognitive, physical (including vision and hearing), communication, social/emotional, and adaptive.”<sup>6</sup>

### a. Referral and intake

A caseworker must refer a child who is less than three years of age whom they suspect of having or being at risk of a developmental delay to the local EIP office within two working days of identification. Parental consent is not required; however, parents may object to a referral. If the parent objects to the referral, then the primary referral source

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<sup>4</sup> OCFS. [Child Development Guide](#). Center for Development of Human Services, State University of New York College at Buffalo

<sup>5</sup> OCFS. “Protocol on Children in Foster Care Who Participate in the Early Intervention Program” ([03-OCFS-LCM-25](#)).

<sup>6</sup> OCFS. “Referrals of Young Children in Indicated CPS Cases to Early Intervention Services” ([04-OCFS-LCM-04](#)).

must document the objection and make reasonable efforts to follow up with the parent within two months.

When an LDSS refers a child in foster care for EIP services, the local county early intervention official or designee (EIO/D) will consult with the LDSS to determine whether parental rights have been terminated or voluntarily surrendered, and whether the parent is available to possibly participate in the EIP. This also provides an opportunity to share information and identify any potential barriers to parental consent and participation.<sup>7</sup>

**b. Appointment of a surrogate parent**

If a child in foster care is determined to be eligible for EIP services, the EIO/D, in consultation with the LDSS, should make reasonable efforts to determine if the child's parent is available to participate in the program. If the parent is not available, whereabouts unknown, or parental rights have been terminated or surrendered, the EIO/D must appoint a "surrogate parent" for the purpose of the EIP. The parent also can voluntarily appoint a surrogate parent upon written consent.

The surrogate parent makes decisions regarding the child within the early intervention system and represents the child in all matters related to screening, evaluation, service plan development and implementation, provision of early intervention services, periodic review of services, and due process procedures.

Under federal law, a surrogate parent may not be an employee of any state agency. While the LDSS Commissioner can consent to medical, dental and hospital services for children who are in the commissioner's custody, the law specifically excludes LDSS employees from acting as surrogate parents in the EIP.

According to a joint protocol developed by OCFS and the New York State Department of Health, the EIO will designate the child's foster parent or an available relative as the child's surrogate parent for the EIP whenever possible and appropriate.

OCFS and the NYS Department of Health Early Intervention Program have developed a joint protocol for children in foster care who participate in EIP, which is available in the OCFS publication, [Working Together: Health Services for Children in Foster Care, Appendix D.](#)

### 3. Preschool special education

If a child is already receiving early intervention services under EIP, he/she can transition into preschool special education when he/she reaches three years of age. The child must be referred to the local Committee on Preschool Special Education (CPSE) for eligibility determination. If the child is determined to be eligible, he/she can continue services. If the child is not determined eligible by CPSE, early intervention services will end after the child's third birthday [PHL §2541 (8)(a)]. Children who have not received EIP services but are in need of preschool special education services may be referred by submitting a written

<sup>7</sup> OCFS. *Working Together: Health Services for Children in Foster Care*, [Appendix D.](#)

referral and request for evaluation to the chairperson of the CPSE at the child's school district.

## E. Services for older youth

In addition to health, mental health, and education services, older youth in foster care are entitled to specific services. As adolescents grow into young adulthood, it is important that they possess the skills necessary to successfully make the transition into adulthood. For youth in foster care, it is even more critical that they possess these self-sufficiency skills, as many have few resources for support and guidance upon leaving care.

Helping to prepare youth for self-sufficiency may be achieved through a variety of methods. Youth may work one-on-one with the caseworker, foster parent, direct care worker, or an adult mentor. The youth may participate in formal education or training, attend life skills programs, take part in facility-sponsored groups, or use other community resources.

### 1. Life skills assessment

Caseworkers must conduct individualized assessments of each youth and develop a written plan to address the youth's specific needs and issues. The Life Skills Assessment within the FASP is required for all youth age 14 and older, regardless of their PPG. The assessment aids caseworkers in documenting the strengths, needs, and priorities of each youth in each of the following life skills categories:

- Forming and sustaining positive relationships
- Problem solving/decision making/goal planning
- Preventive health and wellness
- Education and support
- Vocational/career planning
- Employment skills
- Budgeting and financial management
- Housing
- Home management
- Accessing community resources

LDSSs and VAs may have other tools for caseworkers to use in assessing youth. OCFS recommends the Ansell Casey Life Skills Assessment as the preferred tool for assessing youth. The Adolescent Resources Services Network (ASRN), sponsored by OCFS, can provide training and support in the use of the Ansell Casey Life Skills Assessment.<sup>1</sup>

### 2. Transition planning

To assist youth in making a successful transition out of foster care, LDSSs and VAs should begin transition planning discussions early in the child's placement that continue over the life

<sup>1</sup> OCFS. *FASP Guide for Caseworkers*, Chapter 8, "Foster Care Issues"

of the case, increasing in detail as discharge gets closer. A timely and appropriate introduction to transition preparation will afford youth and workers ample opportunity for thorough planning and to take steps to put in place supports needed for the youth after discharge. It is the expectation that youth be assisted with thinking through what they need to be successful, thereby supporting them with understanding the possible negative ramifications of leaving care without a plan and supports in place.<sup>2</sup>

In order for the transition plan to be effective and useful to the youth, it must be a result of collaboration between the caseworker and the youth. Agencies that are or will be involved in the youth's life also should participate in the transition planning process. For example, schools, mental health agencies, and juvenile justice systems can provide valuable information and insight into the development of the plan.

The transition plan consists of two parts: the "Transition Plan" form ([OCFS-4922](#)) and the "Transition Plan Amendment for Youth Age 18-21" form ([OCFS-3917](#)). LDSSs and VAs are required to develop transition plans with all youth, regardless of their PPG, beginning 180 days (six months) prior to the youth's 18th birthday (age 17½) and document the youth's transition plans on the OCFS-4922 form. Ninety days prior to the youth's 18th birthday, the 90 Day Transition Plan Update section of OCFS-4922 must be completed with the youth's transition plan decisions.

For all youth who choose to remain in foster care after age 18, Form OCFS-4922 must be reviewed every six months, beginning when the youth is 18½ years old, until the youth leaves foster care. Any changes must be documented using the OCFS-3917 form.

For more detailed information on youth transitioning out of foster care, see [Chapter 13](#) of this manual, "Discharge from Foster Care."

### 3. Annual credit checks

Child identity theft occurs when a minor's personal information is used to commit fraud. Children and youth in foster care are especially vulnerable to identity theft, as multiple placements provide more opportunities for unlawful access to personal information.

To combat child identity theft, youth in foster care aged 14 and older must receive annual credit consumer reports until they are discharged from care [[18 NYCRR 428.3\(b\)\(2\)\(vi\)](#), [18 NYCRR 430.12\(k\)](#)]. Federal law requires credit reporting agencies to provide a free consumer report upon request once every 12 months [[15 U.S.C. § 1681](#)]. The LDSS or VA must make a request for a consumer report on behalf of the youth in care with all three credit reporting agencies (Equifax, Experian, and Transunion).

In addition, the LDSS or VA must assist the youth in interpreting the report, and with identifying and resolving any inaccuracies [[42 U.S.C. § 675\(5\)\(l\)](#)]. Efforts to assist the youth in acquiring the report and rectifying inaccuracies must be documented in the case record Progress Notes [[18 NYCRR 428.5](#)].<sup>3</sup>

<sup>2</sup> OCFS. "Transition Planning with Youth for a Successful Discharge" ([15-OCFS-ADM-20](#))

<sup>3</sup> OCFS. "Required Annual Credit Checks for Youth and Young Adults in Foster Care 14 Years of Age or Older" ([15-OCFS-ADM-13](#)).

## Chapter 12: Family Engagement and Services

<b>A. Family Assessment and Service Plan (FASP)</b>	<b>A-1</b>
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## Chapter 12

# Family Engagement and Services

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The ideal outcome of a child's placement in foster care is the child's return to a safe, supportive home whenever possible. To achieve this goal, caseworkers must address the needs of birth/adoptive parents or legal guardians to encourage healthy family relationships. A critical factor in this process is a strength-based engagement with parents, that empowers them to share responsibility for the safety, permanency, and well-being of their children.

In child protective cases, the ongoing assessment of the family's response to the provision of services is documented in the Family Assessment and Service Plan (FASP). Several tools are available to workers, including the Safety Assessment, Risk Assessment Profile (RAP), and Strengths, Needs and Risks (SNR) Scales. The Safety Assessment and RAP are described in detail in [Chapter 4](#), Section E of this guide.

Engaging families is a key practice cited in the OCFS Child Welfare Practice Model, which also lists several strategies such as family team meetings, coached family visits, and community-based programs such as family resource centers and parenting programs.<sup>1</sup>

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<sup>1</sup> OCFS. (2015). [Child Welfare Practice Model](#).

## A. Family Assessment and Service Plan (FASP)

In New York State, the collaboration between workers and families is reflected in the Family Assessment and Service Plan (FASP) that addresses problems/concerns, outcomes, family strengths to be utilized, and activities. In the area of assessment, OCFS regulations require at least:

- Safety assessments in all cases [[18 NYCRR 428.2\(i\)](#) and [428.3\(g\)](#)]
- Risk assessments in child protective services cases [[18 NYCRR 428.2\(h\)](#)]
- Assessments of family functioning
- A thorough and comprehensive assessment or reassessment and analysis of the family members' strengths, needs, and problems
- The family's view of its needs and concerns



### **Resource for caseworkers**

For detailed information on completion of safety assessments, risk assessments, and family evaluations in the FASP, see Modules 5-7 of the OCFS [Family Assessment and Service Plan \(FASP\) Guide](#).

### 1. Safety assessment

The child's home environment is first assessed for safety during a CPS investigation. The child's case record in CONNECTIONS will include the Safety Decision made by the CPS worker at the time of the investigation. For both CPS and non-CPS cases, the file includes a Safety Assessment that is intended to determine whether there is a need to protect the child or to control a dangerous situation. If the Safety Assessment determines that there is an immediate danger to the child, a Safety Plan must be developed to address that danger. The Safety Plan is *not* a set of educational, rehabilitative, or supportive activities or services designed to create long-term change in the family.<sup>1</sup>

### 2. Risk Assessment Profile (RAP)

Unlike the Safety Assessment, a RAP is concerned with identifying the parental behaviors, home conditions, and circumstances that create the likelihood that children will be abused or maltreated in the future.

The RAP is intended to be used as a decision-making tool, supporting decisions about whether or not to open a case for services. Although no one can predict the exact cases in which subsequent child abuse or maltreatment will occur in the future, the Risk Rating populated from information entered into the RAP can classify cases by the likelihood of subsequent child abuse or maltreatment. The RAP assists caseworkers in identifying and then providing services to the highest risk families in order to reduce their risk of subsequent abuse or maltreatment. This enables services to be targeted to families with the highest risk;

<sup>1</sup> OCFS. *Family Assessment and Service Plan (FASP) Guide*, [Module 5](#), p. 5-15.

this is especially important in times when service resources are limited. The RAP does not replace caseworker's and supervisor's judgment.<sup>2</sup>

The RAP is completed in all FASPs when the Program Choice is "Protective." The **Comprehensive or Reassessment RAP** is completed and submitted along with other sections of the FASP. The majority of RAP questions for the Comprehensive or



### **Practice Tip: FASP timeline**

FASP due dates are established in relation to the Case Initiation Date (CID). The CID is the earliest of one of the following events:

- Date of CPS indication
- Date of application for services
- Date of placement
- Date of court-ordered placement or preventive services [[18 NYCRR 428.2\(a\)](#)].

#### **Initial FASP**

For an indicated CPS case, the Initial FASP is due seven days from the date the investigation conclusion was approved. For all other cases, the Initial FASP is due 30 days from the CID. [[18 NYCRR 428.3\(f\)\(4\)](#)]

#### **Comprehensive FASP**

The Comprehensive FASP must be completed no earlier than 30 days prior to its due date and no later than 90 days of the CID [[18 NYCRR 428.3\(f\)\(5\)](#)].

#### **Reassessment FASP**

The Reassessment FASP must be completed no earlier than 60 days prior to its due date and no later than 210 days (approximately seven months) from the CID. It is completed every six months thereafter [[18 NYCRR 428.3\(f\)\(6\)](#)].

#### **Plan Amendments**

Plan Amendments are completed throughout the life of a case whenever a status change occurs between FASP cycles [[18 NYCRR 428.7](#)]. If a status change occurs within the submission period for the FASP, the status change is recorded in the upcoming FASP rather than as a Plan Amendment. Plan Amendments should be completed within 30 days of the triggering event or change.

*Note: In order to support the process of review, approval, and the possible need for revisions, agencies and local districts often require FASPs to be submitted for approval in advance of the actual due date. Workers should plan accordingly and be respectful of others' time constraints.*

Source: OCFS *Family Assessment and Service Plan (FASP) Guide*

Reassessment FASPs are embedded in the SNR Scales (see next section) and are carried forward into the RAP.

<sup>2</sup> Ibid. [Module 6](#)

### **3. Strengths, Needs and Risks (SNR) Scales**

Ongoing assessment of family and child functioning, using needs and strengths, is essential to effective case planning and intervention. It forms the foundation for the change effort, and provides a basis for decision making and planning, as well as a means for evaluation of progress.

The SNR Scales provide a framework for the gathering and recording of key information about individual and family functioning, and the raw material for development of the FASP. LDSSs may elect to make completion of certain SNR Scales optional. Policies will vary from LDSS to LDSS and may also vary from program to program within districts.

The SNR Scales are designed to help caseworkers identify specific conditions that need to change, and to determine the factors or underlying conditions that cause, contribute to, or sustain problems, as well as those that support needed change. The key to developing change efforts that are likely to succeed is an understanding of why a problematic behavior or condition exists and what might be used to help the condition improve. This assessment helps the worker and the family to:

- Identify and understand the factors that are putting the children at risk
- Identify strengths that may mitigate risks and may be used to meet needs
- Inform decision-making about what needs to change

The SNR Assessment Scales are divided into three subcategories: Family Functioning, Child, and Parent/Caretaker. Some of the categories will connect to the RAP in a CPS (Protective) case: the caseworker's responses to SNR Scale elements will update corresponding fields in the RAP. For this reason, it is important that SNR ratings be accurate, as they will impact the risk rating calculated by the RAP. All scales will be displayed in CONNX, and the worker may complete any of the optional scales that are deemed relevant to the assessment of the family and any of its members.

**Family Functioning Scales** are required for both Comprehensive and Reassessment FASPs; their focus is on a specific household. This includes all adults and children living in the home or for whom this is their primary address. At least one set of Family Scales must be completed for the Primary Caretaker's household in order to submit a FASP for approval. Multiple Family Scales can be completed when the Primary Caretaker and Secondary Caretaker live separately, and for other households where tracked children reside or visit frequently. The completion of the Family Scales for these households is not required, and decisions as to which optional households should be assessed should be made in collaboration with the case manager and supervisor.

**Parent/Caretaker Scales** are used to evaluate the strengths and needs of the Primary and Secondary caretakers. Parent/Caretaker Scales must be completed for the Primary Caretaker and Secondary Caretaker in order to submit the FASP for approval. The completion of the Parent/Caretaker Scales is optional for other adults in the household, but it is strongly recommended that they be completed in order to provide a thorough and

balanced picture of the current family situation. If caretakers change, the SNR scales must be updated to reflect the current family situation.

**Child Scales** must be completed for each tracked child still living in the household. For these purposes, a child is defined as:

- An individual under 18 years of age with a relationship of child, stepchild, grandchild, niece/nephew, or ward
- An individual who is 18-21 years of age with an active PPG<sup>3</sup>

See [Appendix 12-A](#) for a complete list of the topics in the SNR Scales.



### **Practice Tip: Completing the parent/caretaker SNR scales**

The SNR Scales focus on the child's primary family and the current situation within that home (i.e., the home of the child's Primary Caretaker or Secondary Caretaker). For children in foster care or other out-of-home placement, the SNR Scales are *not* the place to assess the home of the foster parents or relatives with whom the child is currently living. The focus of the assessment is on what needs to change in order to achieve the PPG and the child's need for safety, permanency, and well-being.

Before proceeding with the SNR Scales, caseworkers should review their progress notes and Safety Assessments in an effort to refresh their memory of key issues, needs, concerns, and recent changes for the family. Assess all family and household members. Rate each scale element based on the most recently available information about that specific family, adult, or child. Caseworkers should use their own observations and interactions with collaterals and with the family to assist in rating the scales and identifying family strengths, needs, and recent changes.

Think of the choices within a continuum, with each scale element as representing:

- High Strengths
- Some Strengths
- Some Needs or Risk
- High Needs or Risk

Select the rating that best fits each individual or family situation. The descriptions associated with each element are there to anchor the ratings along the continuum listed above. Do not be overly preoccupied by specific phrases within these anchors; use the comment section to clarify.

Source: OCFS. (2017). *Family Assessment and Service Plan Guide*, p. 7-6

<sup>3</sup> Ibid. [Module 7](#)

## B. Family Assessment Analysis

State regulation requires that case records describe the concerns that have resulted in the child's placement in foster care [18 NYCRR 428.6(a) and 430.10(a)-(c)]. The Family Assessment Analysis section of the FASP fulfills this requirement. It brings together various aspects of a case, enabling the caseworker to view the case as a whole, to establish priorities, and to begin to shape the Service Plan.

A well-written Family Assessment Analysis provides a solid foundation for development of a clear, focused, change-oriented Service Plan that supports a shared understanding of priorities and concerns between the caseworker and the family. An understanding of what causes or sustains problematic behaviors or conditions helps both the caseworker and the family to focus on addressing these root causes, rather than merely problematic symptoms; to identify barriers which need to be addressed in order to create or sustain long-term change; and to identify strategies for change that have a greater likelihood for success by matching intervention strategies to individual and/or family strengths, needs, styles, and skills.

The identification of family and child strengths will help the caseworker and the family to pursue opportunities and resources that can promote and support change. When done effectively, the process of formulating the Family Assessment Analysis:

- Engages the family in a self-evaluation of needs, progress to date, and preferred alternative future
- Acknowledges progress and change that has occurred
- Seeks to understand why key behaviors and conditions are occurring or persisting
- Identifies the underlying conditions and contributing factors, and what is necessary to bring about real and lasting change
- Examines the family's readiness for change by assessing the conditions for creating change (see box on next page)
- Seeks out motivators and opportunities for change, while establishing priorities for further progress
- Includes various points of view from the family members and others involved

The Family Assessment Analysis comprises three parts that are designed to help workers and the family focus more clearly on what needs to change and what might help to promote or sustain this change.<sup>1</sup>

### 1. Family view

When completing this part of the analysis, caseworkers provide the family's point of view on the current situation and circumstances affecting them. Keeping the information focused on the family's point of view allows for an assessment of what the family feels is important to address at this time and what areas they may feel are not as important. Although the

<sup>1</sup> OCFS. *Family Assessment and Service Plan (FASP) Guide*, [Module 10](#)

family's and caseworker's views may differ, the caseworker's views are not addressed in this area; other areas of the FASP document caseworkers' and others' observations and assessments of current family functioning.



### **Practice Tip: Elements of change**

The following elements are part of the process of change. As families begin to change, assess their awareness of each element and help them to understand the process.

**Initial discomfort.** Family members must experience a level of discomfort as part of their readiness for change. It is this discomfort that tells the family something needs to change. If family members feel no discomfort, they may be denying that there is a problem. In that case, they must be made to understand the consequences (such as removal of the children from the home) if change does not occur. On the other hand, if a family member has too high a level of discomfort, it may be necessary to emphasize and strengthen the other elements.

**Emotional security.** The family must have emotional support during the process of change. Identify members of the family's team that can support family members, attend to their sense of safety, and work toward building the skills and self-confidence needed for change to occur.

**Internalization of responsibility.** Family members must be empowered to take control of their lives and take responsibility for behaviors that affect their ability to provide safety, permanence, and well-being for their children.

**Efficacy.** Efficacy is a family member's belief in his or her ability to carry out and succeed with a certain task. The extent to which family members are involved in assessment and service planning determines efficacy and belief in themselves.

**Preferred future.** Help the family identify where they want to be – a vision for how things will look when they have achieved the outcomes in their plan.

*Source:* Research Foundation of SUNY. (2000). *ASC supervisory core curriculum*. New York State Center for Development of Human Services

## **2. Behavior/contributing factors**

Next, caseworkers need to identify underlying conditions and/or contributing factors that have led to these concerns. These could include the family's knowledge of parenting skills; family members' perceptions of what is acceptable parental behavior; the family's culture; and family members' own experiences as children. Identifying these areas is an essential piece to understanding what is influencing the behavior that is a concern to child welfare.

Finally, the narrative must describe the impact the family's behavior has on the child. If this behavior does not change, what will be the impact on the child's safety, permanency, and well-being? Caseworkers should complete a statement for each child welfare concern that is going to be addressed in the Service Plan.

### **a. Limited English Proficiency (LEP)**

LEP individuals do not speak English as their primary language, and have a limited ability to read, speak, write, or understand English. To provide meaningful access to

programs and services, LDSSs and agencies must provide LEP persons with appropriate free and timely language assistance through the provision of oral interpretation and the translation of “vital documents.”

Each LDSS should have a written Language Access Plan describing how these services will be delivered and providing guidance to LDSS staff.<sup>2</sup> If contacts made by phone or in person indicate that family, child, or subject has limited English proficiency, the plan must include the following actions:

- The use of the OCFS Language Identification Tool ([OCFS Publication 5103](#)) to determine the person’s primary language for in-person meetings.
- If contact is by phone, use of bilingual staff, if appropriate, or an oral interpreting service.
- The use of an on-site interpreter at pre-planned meetings when the family’s language is known. Except in an emergency, an LEP individual may not use a family member, friend, or child as an interpreter. If the LEP person insists on using his/her own interpreter during a meeting at the agency’s office, he/she must sign a Waiver of Right to Free Interpretation Services.
- The noting of every encounter with an LEP individual in his/her case record. [Language services tracking forms](#) are available for documenting this information.

A number of OCFS publications have been translated into the top six languages, other than English, spoken in New York State. They are listed on the OCFS website under Language Assistance Resources: [Spanish](#); [Chinese](#); [Russian](#); [Italian](#); [Korean](#); and [Haitian Creole](#).

### **3. Immigrant/undocumented families**

Immigrant families who are involved with the child welfare system often encounter obstacles such as poverty, language barriers, lack of health care and health insurance, and lack of access to public benefits. Among these obstacles is the immigration status of undocumented family members, including children who have been placed in foster care. Family members who are not U.S. citizens or lawful permanent residents face the possibility of deportation.

A child who is a United States citizen, or who is lawfully residing in the United States, is entitled to receive any social services for which the child is otherwise eligible, regardless of the residency status of the child’s parent(s) or custodial relative(s) [18 NYCRR 403.7(d)]. A child who is not lawfully residing in the United States is entitled to receive information and referral services, child protective services, and foster care [18 NYCRR 403.7 (b), SSL §§ 122 (2) and 398-e].

There is no requirement for LDSSs and VAs to report undocumented immigrants to the U.S. Department of Homeland Security. This includes undocumented children and families receiving information and referral services, child protective services or foster

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<sup>2</sup> OCFS. “Provision of Services to People With Limited English Proficiency” ([16-OCFS-INF-05](#))

care services, as well as the undocumented parent(s) or custodial relative(s) of a child receiving social services who is lawfully residing in the United States or a citizen of the United States.<sup>3</sup>

The category of Special Immigrant Juvenile Status (SIJS) is designed to address the unique problems faced by the population of undocumented immigrant youth in foster care. It enables certain undocumented immigrant youth in foster care to become lawful permanent residents and obtain green cards. SIJS is available to undocumented immigrant youth who are under the jurisdiction of Family Court, and whom the Family Court has placed under the custody of state agencies; or who have been placed under the custody of an individual or entity appointed by a state or juvenile court.

If a caseworker becomes aware that a family may be undocumented, he/she is not obligated to report that information to the U.S. Immigration and Customs Enforcement (ICE). However, because the application process for SIJS can take more than a year, caseworkers should counsel youth in foster care about this opportunity well before they age out of the child welfare system.<sup>4</sup> For more information on SIJS, see [Chapter 16](#) of this practice guide.

## 4. Family strengths

This section outlines the family, individual, and community strengths that are available to the family. Previous areas of the FASP should help to identify what strengths are present. The analysis is based upon the caseworker's observations and interactions with the family. This also is an area of the FASP where other workers assigned to the case may contribute to the narrative. When caseworkers identify the strengths within the family, they can then document how each listed strength and resource might be used to support or sustain change.

Family strengths fall into these general categories (see [Appendix 12-B](#) for examples):

- Cognitive and appraisal skills (problem solving)
- Defense and coping mechanisms (coping skills)
- Temperamental and dispositional factors (emotional strengths)
- Interpersonal skills and supports (relationships)
- External factors (capacity to constructively use resources outside of self)
- Insight (self-understanding)
- Independence (ability to separate)
- Morality (sense and value regarding right and wrong)
- Spirituality
- Creativity
- Humor

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<sup>3</sup> OCFS. "Providing Services to Children of Undocumented Immigrants" ([OCFS-17-ADM-06](#)).

<sup>4</sup> OCFS. "Special Immigrant Juvenile Status" ([OCFS-11-ADM-01](#))

## C. Ongoing Service Plan for the family

The Service Plan describes the case activities and desired outcomes. Its purpose is to:

- Record information gathered about and with the family members
- Serve as a catalyst for evaluations and assessments of the family
- Assist with determining the family's need for services
- Facilitate ongoing planning with the family
- Assess the extent of the family's progress in meeting desired outcomes<sup>1</sup>

Service Plans are required for each Initial, Comprehensive, and Reassessment FASP, and may be updated in Plan Amendment status changes. An Initial Service Plan for an open indicated CPS case must be completed within seven days of the case indication date (CID). For other cases, the Initial Service Plan must be completed and approved within 30 days of the CID [18 NYCRR 428.3(f)(4)].

The Service Plan is a guide for action and a means of measuring progress. Clear, well-written Service Plans give direction, reduce misunderstanding, and help caseworkers and families focus their efforts toward a common objective. Meaningful plans motivate the family and help to promote change. A plan that includes family members' input and reflects their views of the situation has a greater likelihood of success. Clearly written plans also make case evaluation easier by enabling the caseworker and the family to assess whether change has occurred, and if there is a need for continued intervention.<sup>2</sup>

OCFS regulations require that the FASP include [18 NYCRR 428.6(a)(1)(vii-x)]:

1. A plan of services and assistance made in consultation with the family and each child over 10 years of age, whenever possible, which utilizes the family's strengths and addresses the family members' needs and concerns
2. The status of the Service Plan, including service availability and a description of the manner of service provision
3. The family's progress toward plan achievement
4. Essential data relating to the identification and history of the child and family members and a summary which documents the involvement of the parent(s) or guardian, child(ren) and any others in the development of the Service Plan including their input into the Service Plan

The Service Plan includes two sections: "Outcome and Activity" and "Services Needed."

<sup>1</sup> OCFS. *New York State Child Protective Services Manual*, [Chapter 8](#), p. D-6

<sup>2</sup> OCFS. *Family Assessment and Service Plan (FASP) Guide*, [Module 11](#)

## 1. Outcome and activity

Information must be entered for each behavior or circumstance that needs to change. This process must be repeated when there are multiple behaviors or circumstances that need to change.

### **a. Problems/concerns**

This section describes *the specific behaviors or circumstances that need to change* in order for a child to be reunited with his/her family. These will have already been identified and described in the Family Assessment Analysis. A well-written Problem Statement includes:

- A clear description of the behavior or condition that needs to change (Who is doing what?)
- The underlying conditions and contributing factors (Why are they doing this?)
- The impact on the child (How does it affect safety, permanency, and well-being?)

In CONNX, the Problem Statement pre-fills with information carried forward from the RAP and SNR scales. These statements must be amended into a customized behavioral statement that more clearly reflects the specific behavior or circumstance. The caseworker should be careful not to address a new issue when modifying a Problem Statement.<sup>3</sup> A new issue requires a new Problem Statement.

### **b. Outcome Statement**

An Outcome Statement is a description of the *desired result* of the family's participation in a service or activity. It is best when caseworkers and family members develop outcomes together. This promotes shared ownership of the plan and a clearer understanding of expectations.

A well-written Outcome Statement is:

- Clear, concrete, and specific
- Behavioral and observable
- Realistic and attainable
- Time-limited



### **Practice Tip: Writing Outcome Statements**

If you encounter difficulties when writing Outcome Statements, try to imagine what the family will do consistently and over time that shows progress or change.

Describe what the family would be able to do if they successfully complete a program or service.

Ask the family to describe what success would look like.

For an intangible result, such as improved self-esteem or ability to show empathy, describe what this would look like in behavior that someone could observe.

Source: *OCFS Family Assessment and Service Plan (FASP) Guide*

<sup>3</sup> OCFS. *Family Assessment and Service Plan (FASP) Guide*, [Module 11](#), p. 11-5

***c. Strengths***

The caseworker should review the SNR scales and Family Assessment Analysis for the strengths that have been identified for the family. The strengths and resources listed in the Service Plan should relate directly to the specific problem and desired outcome described in the previous section. These may include attitudes and beliefs; knowledge and information; behaviors and skills; and resources.

***d. Activities***

Activities must relate to and help address the specific problem or concern, and should be measurable, realistic, and time-limited. Include activities for everyone who has a part in helping to achieve the desired outcome, such as parents, children, foster parents, relatives, and caseworkers. Develop activities that help family members claim ownership. Include any activities performed by service providers that would promote and support the family's efforts.

**2. Services needed**

This section of the Service Plan lists the specific services to be provided to each family member. These services must address the problems, needs, issues, and concerns described in the "Outcome and Activities section." If services provided do not support at least one of the outcomes in the Service Plan, either the assessment information or the Service Plan needs to be adjusted, or the need for the service should be re-assessed.

## D. Service Plan Reviews (SPRs)

A service plan review (SPR) must be held no earlier than 60 days, but no later than 90 days from the date the child was removed from his/her home. When a child is placed in foster care pursuant to Article 3 or 7 of the Family Court Act, the SPR must be held no earlier than 60 days, but no later than 90 days from the date the child was placed in foster care. Subsequent SPRs must be held every six months. A permanency hearing satisfies the requirements for an SPR if such permanency hearing is held and completed within six months of the previous SPR [18 NYCRR 430.12(c)(2)(i)].

### 1. Service Plan Review panel

A review panel must include the case planner or the child's caseworker and an administrator or other person not responsible for the case management or delivery of services to that case, nor in the direct line of supervision for that case. The review panel must convene a case conference to review progress made through implementation of the previous service plan, identify issues of concern and suggest modifications that impact on and inform the development of a new service plan for the case.

#### *a. Panel participants*

Efforts must be made to involve the following persons as participants in the service plan review [18 NYCRR 430.12(c)(2)(i)(a)]:

- The child, if he or she is at least 10 but less than 14 years of age, unless there is a documented reason related to the current necessity of placement why the child should not be involved;
- The child, if 14 years of age or older;
- The parent(s), unless their rights to the child have been terminated, guardian(s), or, in the case of a child whose permanency planning goal is other than discharge to a parent, the person to whom the child will be discharged;
- In the case of an Indian child, the child's tribe if known, and where possible, a qualified expert witness as defined in 18 NYCRR 431.18(a)(5);
- The child's current foster parent, caretaker relative, or pre-adoptive parent currently providing care for the child. These individuals must be provided with notice of and an opportunity to be heard in any service plan review;
- For a child with a permanency planning goal of another planned living arrangement with a permanency resource, any person identified as the permanency resource;
- The case manager, case planner's supervisor, and child protective services monitor, if applicable;
- Key providers of services to the child and family;
- Members of the case planning team chosen by the child in foster care who is 14 years of age or older;

- The attorney for the child; and
- Any other person identified by the child's parents.

The efforts to involve the participants must include, but are not limited to written notice to each participant at least two weeks prior to the SPR inviting them to attend, giving the date, time and location, and in the case of the parents, informing them that they may be accompanied by persons of their choice [18 NYCRR 430.12(c)(2)(i)(b)(i)].

***b. Invited participants unable to attend***

If invited participants were unable to attend the SPR, the case planner must, where possible, meet face-to-face with them no later than 30 days after the date the SPR was held. During the face-to-face contact, these individuals must be given a summary of the service plan for the child and family, which must be discussed with them. The summary must include at least the following [18 NYCRR 430.12(c)(2)(i)(b)(ii)]:

- New or continued goals or outcomes and anticipated completion dates when goals are to be achieved;
- A description of the activities to be completed within the upcoming review period and the family members or service provider who are to perform each activity;
- An updated visiting plan for children in foster care;
- Documentation stating the involvement of the parent, child, and any others in the development of the service plan and a listing of the participants in the SPR; and
- A description of the progress in meeting or completing previously stated goals or outcomes and tasks or activities, the participation of family members in the process, and service provision problems, if any, during the period under review.

If face-to-face contact is not possible, a letter will be sent to the invited participants, informing them that an SPR was held and that a copy of the documents presented during the SPR will be made available to them upon request.

## **2. Conclusions and recommendations**

A written statement of the conclusions and recommendations must be developed by the panel, and such report must identify barriers to permanency and any other issues that must be addressed in the new service plan. The review panel must convene a case conference to review progress made through implementation of the previous service plan, identify issues of concern, and suggest modifications that may contribute to the development of a new service plan for the case [18 NYCRR 430.12(c)(2)(i)].

For a child in foster care with a PPG of discharge to another planned living arrangement with a permanency resource (APPLA), the Service Plan Review must address the steps taken by the LDSS or VA to ensure that the child's foster parent(s) or the residential facility in which the child is placed is following the reasonable and prudent parent standard [18 NYCRR 430.12(c)(2)(i)(d)]. For more information on this standard, see [Chapter 8](#) of this manual.

The FASP must document the names and, where appropriate, the titles of the panel members, the names of the invited participants who attended the Service Plan Review, and the date of the review. When the invited participants do not attend the review, the efforts made to involve them in the review must be documented [[18 NYCRR 430.12\(c\)\(2\)\(ii\)](#)].

## E. Culturally competent services

Initial meetings with families, and all interactions with them throughout each case, are more effective when caseworkers are culturally responsive. Cultural competence is both a process and an outcome. It is a set of behaviors, attitudes, and policies coming together within a system, agency, or individual that enables them to work effectively in cross-cultural situations. It is a continuous process of learning about the cultural strengths of others and integrating their unique abilities and perspectives into child welfare practice.

Culturally responsive practice requires caseworkers to gain knowledge about various cultures, develop skills that will be useful in helping families from other cultures, and conduct an ongoing self-evaluation of their own cultural assumptions and attitudes.

A lack of cultural competence can result in a lack of communication and understanding among agencies, service providers, families (foster and biological), and children in care, and can adversely impact the effectiveness of service delivery. Relying on assumptions about a culture can lead caseworkers down a service path that is not necessarily the most helpful to the child or family. For example, in some cultures, acknowledging domestic violence or a mental health issue is frowned upon. A caseworker should be aware of such barriers and be prepared with a culturally sensitive plan to address them.

Increasing cultural competence requires continuous self-assessment and awareness; an acknowledgement that you don't – and can't – know everything about every culture, including your own; and a recognition that becoming more culturally competent is a perpetual journey, not a destination to be reached.<sup>1</sup>

The skills needed to become more culturally competent are closely aligned with family-centered, strengths-based practices that are used throughout the child welfare system.

### 1. Knowledge of cultural differences

Child welfare caseworkers in New York State can expect to work increasingly with children, families, supervisors, and peers from backgrounds different than their own. New York is culturally diverse, especially in the New York City metropolitan area, where as many as 800 languages are spoken.

There are numerous ethnic subgroups within each broad ethnic category. For example, individuals identifying themselves as Hispanic may have their roots in Puerto Rico, the Dominican Republic, Mexico, Ecuador, Colombia, or other Central and South American countries. The Asian population includes families with traditions from China, the Philippines, Japan, Korea, India, Pakistan, and Polynesia.

Cultural differences also can exist within major cultural groups, based on factors such as class, age, gender, and language. For example, a low-income family from South America that has been in the United States for two months and is unable to speak English faces different challenges than a family that originated in the same South American country that

<sup>1</sup> [https://web.stanford.edu/~hakuta/www/archives/syllabi/E\\_CLAD/sfusd\\_cult\\_03/melissa/Culture%20Defined.htm](https://web.stanford.edu/~hakuta/www/archives/syllabi/E_CLAD/sfusd_cult_03/melissa/Culture%20Defined.htm)

has been in the U.S. for two generations and speak English as their first language. It is culturally insensitive to believe that all members of a particular group share all characteristics and circumstances. It is essential to know each person individually, within his/her larger cultural context.<sup>2</sup>

What is behaviorally appropriate in one culture may be considered inappropriate in another. Accepted practice in one culture may be prohibited in another. Cultural backgrounds may affect families' willingness to ask for help and their behaviors with helping professionals and agencies. To fully understand and appreciate these differences, caseworkers must become familiar with varying cultural traditions and norms.

Child welfare workers must have a basic knowledge of the ways in which cultures differ and how these differences affect the helping process. They need to understand that different cultures view reality in different ways.

### ***a. Religion and spirituality***

Religion has been defined as “an organized, structured set of beliefs and practices shared by a community related to spirituality” and spirituality as “the search for meaning, purpose, and morally fulfilling relations with self, other people, the encompassing universe, and ultimate reality, however a person understands it.”<sup>3</sup>

Religion is closely related to culture, and strongly influences a person's view of the world. Spiritual or religious beliefs are important to many people and can be helpful to consider as a support system when developing a service plan for a family. If this dimension of a family's life is ignored, provided services may be less effective.

As with other values related to culture, a worker's own religious or spiritual beliefs could influence his/her interactions with families. Ethical concerns may arise over whether it is appropriate to pray with clients or to refer them to spiritual helpers that match their interests. Caseworkers should talk with their supervisors about any agency policies relevant to religious and spiritual discussions so they can effectively explore these topics with families.

## **2. Self-awareness of cultural bias**

To provide culturally responsive services, child welfare workers must recognize their own biases about other ethnic and cultural groups. Often, these are “implicit biases” that are deeply rooted in a worker's own background and subtle messages received from the media, peer groups, and society as a whole.

Implicit biases are unconscious attitudes about other people that affect our understanding, actions, and decisions. They develop over the course of a lifetime, beginning at an early age

<sup>2</sup> Diller J.V. (2007). *Cultural Diversity: A Primer for the Human Services*, 3rd Edition, Belmont, CA: Thomson Brooks/Cole.

<sup>3</sup> Canda, E.R. & Furman, L.D. (2010). *Spiritual Diversity in Social Work Practice: The Heart of Helping*, 2nd Edition. New York: Oxford University Press. p. 28.

through exposure to direct and indirect messages. They produce both favorable and unfavorable reactions that are triggered without our intentional control.<sup>4</sup>

For example, most caseworkers would not describe themselves as racist. But, because the dominant culture in the U.S. has a history of bias toward people of color, white caseworkers may have attitudes that are inherently biased. These attitudes may show themselves in commonplace verbal, behavioral, or environmental indignities that have been termed “racial microaggressions.” Whether intentional or unintentional, these words or actions may communicate hostile, derogatory, or negative slights and insults.

Cultural bias also may exist on an institutional level as structural racism. This may result in a combination of policies, practices, or procedures that are embedded in an organization and that lead to unequal outcomes for different racial or ethnic groups. In child welfare practice, this contributes to the problem of disparity, or unequal treatment among racial or ethnic groups.

### **3. Engagement with families**

Workers must actively educate themselves about each family’s culture so they can understand family members’ behaviors within their cultural context. There are specific actions and behaviors that caseworkers can practice that support the delivery of culturally appropriate interactions and rapport-building, such as:

1. Ask the client/family members how they identify themselves culturally or ethnically. People from the same ethnic group may identify themselves differently. For example, the terms Hispanic, Latino/Latina, Chicano/Chicana, Mexican, Mexican National, and Mexican-American have individual meaning and importance for people of similar cultural and ethnic backgrounds.
2. Do not assume which family member should be spoken to first. This varies from culture to culture. For some cultures, it is important to identify and address the family member from whom approval needs to be obtained. One approach for handling this is to request direction from the family.
3. Ask individuals how they wish to be addressed. It may be perceived as disrespectful and impolite to use first names only.
4. Be aware of invading “personal space.” Some cultures do not allow any physical contact between strangers, including handshakes. While some cultures recognize a firm and strong handshake as a sign of respect, others perceive a firm handshake as a sign of aggression or rudeness.
5. Be sensitive about making eye contact. In some cultures, eye contact is an indication that a connection has been made and that a relationship has been formed. In such cultures, lack of eye contact is sometimes perceived as a lack of trust or an indication of dishonesty. In other cultures, direct eye contact indicates a lack of respect or arrogance and should be avoided.

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<sup>4</sup> Kirwan Institute for the Study of Race and Ethnicity. “Understanding Implicit Bias,” Ohio State University. Accessed at <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

6. Be respectful about offers of food. In some cultures, it is customary to offer food and refreshments to visitors, often before any formal conversation. If you decide that you do not want to accept the offer of food, decline it in a respectful manner. If the food or refreshment looks unappetizing to you, refrain from any facial expression that may suggest disapproval.<sup>5</sup>

#### **4. Adapting child welfare practice**

Workers can take steps to improve their skills in responding to cultural differences:

- Assess the meaning of culture for individual clients and client groups, encourage open discussion of differences, and respond to culturally biased cues.
- Master interviewing techniques that reflect an understanding of the role of language in the client's culture.
- Conduct a comprehensive assessment of client systems in which cultural norms and behaviors are evaluated as strengths and differentiated from problematic or symptomatic behaviors.
- Integrate the information gained from a culturally competent assessment into culturally appropriate intervention plans and involve clients and respect their choices in developing goals for service.
- Select and develop appropriate methods, skills, and techniques that are attuned to clients' cultural, bicultural, or marginal experiences in their environments.
- Generate a wide variety of verbal and nonverbal communication skills in response to direct and indirect communication styles of diverse clients.
- Effectively use clients' natural support systems in resolving problems, such as folk healers, storefronts, religious and spiritual leaders, families of creation, and other community resources. This needs to be done in a manner consistent with applicable confidentiality standards.
- Identify service delivery systems or models that are appropriate to the targeted client population and make appropriate referrals when indicated.
- Consult with supervisors and colleagues in identifying features of their own professional style that impede or enhance culturally responsive practice.
- Evaluate the validity and applicability of new techniques and research for work with diverse client groups.<sup>6</sup>

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<sup>5</sup> Oregon State Department of Human Services. (2007). *Child welfare procedure manual*. Salem, OR: OSDHS

<sup>6</sup> National Association of Social Workers (2001). "NASW standards for cultural competence in social work practice," Washington, DC: NASW.

## Chapter 13: Discharge from Foster Care

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## Chapter 13

# Discharge from Foster Care

Children are discharged from foster care to a variety of caregivers, including parent(s), relative(s), adoptive parents, their own care, and alternative settings.

As with permanency planning, discharge planning should begin as soon as a child enters into foster care. Casework should be focused on achieving the child's permanency planning goal (PPG) through ongoing assessments of safety and risk, observations of family and child functioning, provision of services to families and children, and permanency hearings.

When case progress indicates that discharge from foster care is appropriate, the caseworker should begin entering information in the FASP discharge section, which must be completed 30 days before an anticipated trial or final discharge. For an unplanned discharge, the discharge section should be completed within 30 days of discharge.



### **Practice Tip: Discharge options in the FASP**

CONNECTIONS (CONNX) provides discharge windows in the FASP that allow you to record information about the appropriateness of the discharge.

This section of the FASP should be completed 30 days before an anticipated discharge. They may be completed at any time in the FASP cycle. For an unplanned discharge, complete the discharge section within 30 days of the discharge.

The FASP record shows four types of discharges:

- Parent/Relative/Other Caretaker
- APPLA/Independent Living
- Adult Residential Care
- Adoption (only accessible from the Child Case Record [CCR])

## A. Return home

As noted in [Chapter 6](#) of this manual, most of the children in foster care have a permanency planning goal of returning to their homes. According to recent New York State MAPS data, more than 60% of children discharged from care in the state return home to their birth parents or to persons legally responsible for their care (PLRs).

Ideally, the work that has been done with the family since the child's placement has been focused on reducing risk and building strengths so the child may return home safely. The U.S. Department of Health and Human Services, which conducts Child and Family Services Reviews in all states, established the standard that children in foster care are to be discharged within 12 months of the child's placement in care. Some of the practices that promote this outcome include:

- Providing appropriate, timely services to the child and family
- Developing a support group (team) for the family
- Engaging parents or PLRs in developing and implementing the service plan
- Completing regular safety and risk assessments to measure change
- Encouraging visits and other contacts between children and birth parents

As families make progress toward reunification, child welfare agencies, courts, and other service providers must work across disciplines to assess the family's strengths and needs and to determine when it is safe and appropriate to return a child home. Working with the family, caseworkers examine such variables as whether the safety issues that resulted in out-of-home placement have been addressed, whether parents and children have received the services outlined in the case plan, whether parents have met other case plan requirements, whether there is a plan in place to keep children safe once they return home, and more, depending on the case circumstances.

A reunification decision is based on safety. In some cases, however, a child may be returned home while risk factors continue to be addressed. A specific and realistic safety plan can adequately protect the child's safety while there is continued work on the underlying issues that affect parental capacity and the vulnerability of the child. The LDSS or VA are expected to continue to provide ongoing assessment and services to mitigate risk and address underlying issues related to the threat of maltreatment.

Determining when to return the child safely must include some of the same safety assessments that were used in determining that the child needed to be removed from the home. The caseworker must evaluate the risks of abuse or maltreatment, the vulnerability of the child, and family strengths, with particular focus on parental capacity and the conditions that affected that capacity.

### 1. Discharge decision-making and planning

A discharge plan will support the family and child after discharge and help to maintain the long-term stability of the living arrangement. A well-documented discharge plan clearly

defines roles and expectations for maintaining safety, stability, and child well-being. Should the need for services arise again in the future, the previous discharge plan will provide a basis for future assessment and intervention.

As indicated in the previous section, the FASP includes a section on discharge planning. When considering the discharge of a child from foster care to the home of a “Parent, Relative, or Other Caretaker,” the caseworker is prompted to assess what makes discharge to this home a safe and appropriate decision at this time.

There are three areas to address for *each child* being considered for discharge from foster care:

**a. *Situations, behaviors, and concerns***

The caseworker must first consider the parental behaviors or home conditions that created or maintained the need for placement. This information can be found in “Original Reason for Case Opening,” if the child’s placement in foster care triggered the CID, or “Case Update” within the FASP/Plan Amendment following the child’s placement in foster care.

For the child’s discharge from care to be safe and appropriate, the caseworker must have observed changes in behaviors or conditions that now create a safe environment for the child in the anticipated home of discharge. Examples include:

- Custodial parent has severed a dangerous relationship and demonstrates an ability to keep dangerous persons away from child.
- Parent now has sufficient and stable income/housing.
- Parent demonstrates an awareness of child’s needs and responds appropriately.
- Parent has and uses a support system effectively to meet family/child’s needs.
- Parent is committed to sending child to school and has a working relationship with child’s school.
- Parent/child conflict has been reduced or eliminated, and both have access to resources to support parent/child interaction.
- Parents demonstrate improved communication/conflict management.

The caseworker also must consider whether there are ongoing issues or concerns related to other children or adults in the household that may impact the child’s safety. Examples include:

- Parent is raising other children with/without special needs in the household.
- Parent is caring for an elderly/sick/disabled family member.
- Another child/adult in the household presents some risk of harm that parent must manage.

- Other children remain in foster care but are anticipated to return home at some time in the future.
- Adult in household is anticipated to return home from prison/hospital/rehab/etc.
- Relative raising child needs to maintain appropriate/effective boundaries with the child's parents.<sup>1</sup>

### ***b. Decision support***

The caseworker must consider key factors that may determine whether the child's discharge from foster care is appropriate. These factors are:

- Has the parent/caretaker met the conditions of the court order? If not, what court-ordered conditions have not been met, why were they not met, and (if applicable) what steps must be taken in order for the child to return home?
- Is the parent/caretaker fully supportive of the discharge decision? If not, what are the parent's concerns (e.g., finances, housing, child's behavior)?
- Is the child fully supportive of the discharge decision? If not, what are the child's concerns (e.g., circumstances at home, maintaining contact with foster parents, changing schools again, or availability of resources if they need help)?<sup>2</sup>

### ***c. Needs and resources***

The caseworker must review the child's needs related to:

- Living conditions and sleeping arrangements for the child following discharge
- Financial ability of the parent or caretaker to provide for the child's needs
- The child's special needs, if any
- Availability of health insurance for the child

If any needs are identified, the caseworker must have information indicating that there are resources within the extended family and/or community or anticipated ongoing services that will support the child and family upon discharge of the child from foster care. These may include the parent's continued participation in alcohol/substance use disorder treatment, weekly home visits by a preventive services agency, participation in a monthly support group, or continued involvement by a relative. These resources must have been identified the progress notes and/or elsewhere in the case record.

## **2. Discharge from voluntary placement**

When parents have voluntarily transferred custody of their children, the voluntary placement agreement usually specifies the child's return either by a certain date or upon the occurrence of a specified, identifiable event. These terms must be followed, unless a court order has been issued to the contrary due to a potential risk to the child's safety. The child's

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<sup>1</sup> OCFS. [Family Assessment and Service Plan \(FASP\) Guide](#), Module 8.

<sup>2</sup> Ibid.

return also may be delayed if the parent or guardian is unavailable or incapacitated [SSL §384-a(2)(a)].

The parent or guardian may ask the LDSS to return custody of a child earlier than the date or event specified in the agreement. In this case, the LDSS must either return the child to the parents or deny the request within ten days of receiving the request. If the request is denied, the parents have the right to seek a remedy in Family Court. When the voluntary placement agreement does not include a specific date or event, the LDSS must return the care and custody of the child to the parents within 20 days of receiving the request [SSL §384-a(2)(a)].

If, however, the child remains in foster care until the court holds the initial permanency hearing, the court retains jurisdiction over the case and the case will remain on the court calendar for further permanency hearings [FCA §1088]. The child will then remain in the custody of the LDSS until further order of the court or until the court allows the LDSS to discharge the child without court order [FCA §1089(d)(2)(viii)(C)].

If the child was placed in foster care because his/her parent or guardian was incapacitated, and the LDSS is notified by the parent or guardian that he/she is no longer incapacitated and is able to care for the child, the LDSS must return the child within ten days of receiving the notice unless a court order has been issued to the contrary [SSL §384-a(2)(h)(iv)].

### 3. Trial discharge

A trial discharge means that the child is physically returned home while he/she remains in the legal custody of the LDSS. The family's service plan remains in place and permanency hearings will continue to be held by the Family Court [FCA §§1055(b)(i)(E) and 1089(d)(2)(viii)(C)]. A LDSS may place a foster child on a trial discharge basis to the child's parent unless the court has prohibited trial discharge or has conditioned the placement on a trial discharge basis on another event [FCA §§1055(b)(i)(E) and 1089(d)(2)(viii)(C)].

Casework contacts with the family and the child as required in regulations 18 NYCRR 430.12(c)(3) and 441.21 continue during a trial discharge, as the child is still in foster care.<sup>3</sup> See [Chapter 12](#) of this manual for details on casework contacts.

OCFS policy states that a trial discharge is appropriate when the case planner has assessed that there is a real possibility that a final discharge would result in the child's replacement in foster care because of ongoing issues in the home. Automatic use of trial discharge without the presence of any factors that indicate the potential for replacement is not appropriate.<sup>4</sup>

A trial discharge that extends beyond six months affects eligibility for federal reimbursement under Title IV-E unless a court has ordered a longer trial discharge. If the trial discharge extends beyond six months, or beyond the time period the court has deemed appropriate, and the child is returned to foster care, the return will be deemed a new placement for

<sup>3</sup> Administration for Children and Families (2012), Federal program instruction ACYF-CB-PI-12-01 accessed at <https://www.acf.hhs.gov/sites/default/files/cb/pi1201.pdf>

<sup>4</sup> OCFS. (1993). "Trial Discharges of Children from Foster Care" ([93-LCM-157](#))

purposes of Title IV-E eligibility and a new eligibility determination will have to be made to continue Title IV-E reimbursement for the case [45 CFR 1356.21(e)].

A trial discharge means that the child is physically returned home while he/she remains in the legal custody of the LDSS. The family's service plan remains in place and permanency hearings will continue to be held by the Family Court [FCA §1055(b)(i)(E)]. A trial discharge cannot be used if the court's custody order prohibits its use, or if the court order permits trial discharge only on condition of a specified event which has not occurred [FCA §1055(b)(i)(E)].

See [Section D](#) of this chapter for information on trial discharges of youth between the ages of 18 and 21.

#### **4. Preventive services before and after discharge**

Preventive services are supportive and rehabilitative services that are provided to children and their families. According to New York State Social Services Law [SSL §409], preventive services are supportive and rehabilitative services provided to families and children to:

- Avert an impairment or disruption of a family which will or could result in the placement of a child in foster care
- Enable a child who has been placed in foster care to return to his/her family at an earlier time than would otherwise be possible, or
- Reduce the likelihood that a child who has been discharged from foster care will return to such care

The eligibility standards for preventive services, both mandated and non-mandated, are set forth in SSL §409-a and 18 NYCRR 423.3 and 430.9. For detailed information on eligibility standards for mandated preventive services, refer to the [New York State Preventive Services Practice Guidance Manual](#).

OCFS regulations for preventive services require that mandated preventive services can continue only if a new determination is made every six months after the initial application for services. The determination must show that the child will be placed or will remain in foster care unless preventive services are provided and that it is reasonable to believe that by providing such services, the child will be able to remain with or return to the child's family [18 NYCRR 423.4(b)(1)].

##### **a. Expediting the return home**

Preventive services must be provided to eligible families if they will allow a child to be discharged from foster care sooner than would otherwise be possible [18 NYCRR 430.9(e)]. All of the following conditions must be met for the family to be eligible:

- Preventive services must be directly related to one or more of the reasons the child is currently in foster care. The most recent Family Assessment and Service Plan must show how specific preventive services relate to one or more documented reasons for the child's placement into foster care.

- Discharge of the child from foster care must be anticipated within six months. The case record must show the anticipated discharge date to be in conformance with the service appropriateness condition noted above and include a discharge plan that meets the goals set forth in the most recent Service Plan.

Returning the child to parents or caretakers may only occur when placement will be safe and appropriate. The most recent FASP must include a written consideration and determination that the child's return to his/her parents or caretakers will be safe and appropriate.

*Preventive Housing Services* are provided to enable a foster child to return to his or her parent when a family needs financial assistance to afford or retain appropriate housing in order to care for a child. This may include providing more space to accommodate the child or upgrading the condition of a house or apartment so the child can live there safely. Preventive housing services must be provided to eligible families when subsidies are needed to expedite a child's discharge from foster care and when certain conditions are met [18 NYCRR 430.9(e)(2)].

At the time housing services are authorized, the case manager must determine that the primary factor preventing the discharge of the child from foster care is the family's lack of adequate housing. There must be documentation that the child is expected to be discharged from care within two months. The child must have been in foster care for at least 30 days and can be safely returned to his/her parents or caregivers if housing services are provided.

Alternatively, it can be documented that the child has been in foster care for any length of time (i.e., it could be fewer than 30 days), his/her family has moved to inadequate housing since the child's placement, and the child can be safely returned to his/her parents or caregivers if housing services and any other available preventive service are provided. In addition, there must be documentation of the family's housing situation. Housing services may be authorized if the family:

- Is homeless;
- Is living in temporary housing such as a shelter or hotel;
- Is residing in a home, room and board situation, or with friends or relatives and the return of the child would exceed the capacity of the residence according to local laws and regulations, would result in eviction or would create an unreasonable and unsafe degree of overcrowding, as determined by the case manager;
- Has a home, but is at imminent risk of losing the home because of past due rent or mortgage payments;
- Is living in a building that is subject to a vacate order; or
- Is living in a home that poses a health and safety risk that would place the child at imminent risk of harm.

Finally, where appropriate, there must also be a description of the home the family has moved into or will move into in order for the child to be returned, or, if the family has not yet located a home, the type of home the family will need in order for the children to be returned home safely.

Preventive housing services may be authorized and payments made before the child is discharged, but discharge must occur no later than two months after housing subsidies are authorized or paid or, where relevant, adequate housing was located, provided and, if necessary, renovated such that the child could be safely discharged to such housing. Return to the child's parents or caretakers may only occur where the placement will be safe and appropriate. If the child is not discharged within two months after preventive housing services have begun, it will be assumed that the child is in foster care for other reasons. At that point, preventive housing services will be terminated.

### ***b. Preventing re-placement***

Preventive services must be provided to eligible families when these services are essential to avoid the re-placement of the child into foster care. The eligibility standards include all of those that apply to children at risk of placement [18 NYCRR 430.9(d)]. In addition, three other circumstances may establish eligibility for mandated preventive services:

- *Family Court contact*: The child is the subject of a juvenile delinquency or PINS petition or has been determined by the Family Court Intake or Family Court Probation Service to be at risk of being the subject of such a petition [18 NYCRR 430.9(d)(1)(i)].
- *Unplanned discharge*: The child has been discharged from foster care within the two years immediately prior to the date of application for services **and** that discharge took place at least three months prior to the anticipated discharge date and without the achievement of all the goals set forth in the Service Plan that were being pursued at the time of discharge. Both the conditions must be met – the time limit *and* the unplanned nature of the discharge [18 NYCRR 430.9(d)(2)(i)].
- *Recurrence of reason for placement*: The child, parents, or caretakers have exhibited a pattern of behavior or a condition which is substantially similar to one or more of the behaviors or conditions which contributed to the child's previous placement in foster care and which is likely to lead to the necessity of re-placement of the child [18 NYCRR 430.9(d)(3)(i)]. The behaviors and conditions referred to in this standard include all of the standards for risk of placement. Because of the previous placement history, however, this standard allows for the provision of mandated preventive services *before* problems reach the severity required for placement into foster care.

*Preventive housing services* for the purpose of preventing placement or re-placement in foster care may not be provided for more than three years [18 NYCRR 430.9(h)(2)]. In addition, these services must be terminated when:

- The child for whom the subsidy was initiated has been returned to foster care (except for a brief period (not to exceed 30 days) due to a parent service need emergency)

- Adequate permanent housing has been obtained and the family no longer requires continued housing services in the form of a subsidy
- The family no longer satisfies the financial eligibility standards for Preventive Housing Services [the financial eligibility standards are set forth in 18 NYCRR 423.2(b)(16)(iv)]
- The child for whom the subsidy was initiated no longer lives in the family home
- The family has moved out of the state
- The youngest child for whom the family is receiving the Preventive Housing Services subsidy has turned 18, or
- The family moves out of the original housing unit for which housing services were obtained and the LDSS in which the family currently resides determines that adequate permanent housing is available and continued housing services are not necessary to prevent the child's return to foster care [18 NYCRR 423.2(b)(16)(v)]

## 5. Health care coordination

The continuity of health care services should be maintained when a child achieves permanency from foster care. Health care coordination addresses the following issues:

### **a. Discharge exam**

A discharge exam is recommended for all children leaving foster care, except for children discharged from care to another planned living arrangement with a permanency resource (APPLA). Children discharged to APPLA must have a comprehensive medical examination prior to discharge, unless the child has undergone such an examination within one year prior to the date of discharge.

### **b. Continuous Medicaid coverage**

Children discharged from foster care are generally eligible for 12 months of Medicaid coverage. LDSS staff responsible for determining Medicaid eligibility will need to complete the appropriate determinations in a timely manner to continue the child's coverage. The LDSS should have internal processes in place for communicating changes in the child's living arrangements, including updating the child's address.

### **c. Standing appointments, treatment, and medication**

Inform the child and parent or discharge resource of any appointments that have been scheduled. Medications, prescriptions, and information about other treatments should be provided upon discharge. The child should continue with the same medical and specialty providers after discharge from care.

### **d. Information**

The discharge resource (parent, guardian, or adoptive parent) or the child (when discharged to his or her own care) must be provided with a comprehensive health history, both physical and mental, of the child and the child's biological parents when the child is discharged from care. Information identifying the biological parents cannot be

provided to adoptive parents, and HIV information cannot be provided to anyone but the child if the child has the capacity to consent and has not consented to such release [18 NYCRR 357.3(b)(3) to (5)]. Further, a child leaving foster care by reason of attaining the age of 18 or older and who has been in foster care for six months or more may not be discharged from care without being given health insurance information [18 NYCRR 430.12(l)].

## B. Discharge to relative (custody and guardianship)

A relative may petition the court for guardianship or custody of a child who has been placed in foster care [FCA §1089-a(a)]. The law sets forth the criteria necessary for the court to grant such a petition, including where the parent consents or refuses to consent to the petition. The Family Court must find that it is in the child's best interests, the child's safety will not be jeopardized by terminating the placement order issued in accordance with FCA §1055, and the arrangement will provide the child with a safe and permanent home.

New York State's Kinship Guardianship Assistance Program (KinGAP), provides monthly payments and other benefits to relative guardians of children that have been discharged from foster care [SSL §§458-a to 458-f]. KinGAP provides assistance to relatives and certain nonrelative caregivers who obtain legal guardianship.<sup>1</sup>

Legal guardianship can be a temporary arrangement, as a child's parent(s) can petition the court to regain guardianship if the parent(s) demonstrate substantial improvement in the circumstances that lead to the relative applying for guardianship. Most legal guardianship arrangements, however, tend to be long term, and last until the child reaches age 18 or age 21 with the youth's consent [SCPA §1707]. Parents whose parental rights have not otherwise been terminated or voluntarily surrendered can petition the court to end the guardianship, but the Court makes the ultimate determination.

Where custody and guardianship of a child have been committed to an authorized agency or where both parents whose consent to the child's adoption would be required or would be entitled to notice of the adoption proceeding for such child have died, the Court can appoint that relative or other suitable person ("fictive kin") as the permanent legal guardian of the child [FCA §661(b)]. The permanent guardian can make medical and educational decisions on behalf of the child and enroll him/her in a health insurance plan. The permanent guardianship can continue until the child is 21, if the child consents [FCA §661(a)]. If the child is under the age of 18 when the court grants guardianship, guardianship ends at age 18 unless the court extend the guardianship with the child's consent. Permanent guardians can consent to the adoption of the child [FCA §661(b)].

For more information on care by relatives, see [Chapter 5](#) of this practice guide.

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<sup>1</sup> OCFS "Kinship Guardianship Assistance Program" [11-OCFS-ADM-03]

## C. Discharge to adoption

Discharges to adoption are documented in the Child Case Record (CCR) section of the FASP, which is created when a child is freed for adoption. After parental rights have been terminated, either voluntarily or by court order, the case in CONNX is entered under the child's name rather than the birth parent's name.

As part of the permanency planning process, the caseworker will have had discussions about adoption with both the birth parents and the child. The child's readiness for adoption has been assessed on an ongoing basis (see [Chapter 6](#) of this manual). The adoptive family must be approved according to OCFS regulations ([18 NYCRR Part 421](#)). For details on this process, see the [OCFS Adoption Services Guide for Caseworkers](#).

### 1. Adoptive placement

Adoptive placement begins when a child has been placed into a home for purposes of adoption and the adoptive parent(s) and the authorized agency sign an adoptive placement agreement [[18 NYCRR 421.1\(d\)](#) and [421.18\(k\)](#)]. This agreement contains a statement of the rights and responsibilities of each party.

In general, New York State law requires that an order of adoption may not be granted unless the child under the age of 18 has resided with the prospective adoptive parents for at least three months. The judge may dispense with this requirement but must state in the order of adoption the reason for doing so. The three month requirement is deemed to have been met if the adoptive parents have fostered the child in their home for more than three months [[Domestic Relations Law §112\(6\)](#)].

During this period, the caseworker will visit the family and assess whether the parents and child are adjusting to each other and whether additional services are needed. When the supervision period is complete, and if all parties agree that the adoption is in the best interests of the child, the agency will accept the family's petition to adopt the child.<sup>1</sup>

The child remains in the care and custody or custody and guardianship of the LDSS until the adoption is finalized.

### 2. Adoption subsidy

An adoption subsidy is a monthly payment that assists an adoptive family in caring for a child who is considered handicapped or hard to place, as defined in OCFS regulations [[18 NYCRR 421.24\(a\)\(2\)](#) and [\(3\)](#)]. An adoption subsidy agreement must be signed and approved *before* the adoption is finalized, unless the adoptive parent(s), subsequent to the adoption, become aware of the child having a physical or emotional condition or disability that would qualify the child to receive an adoption subsidy and a physician certifies that the condition or disability existed prior to the adoption [[SSL §453\(1\)\(a\)](#) and [18 NYCRR 421.24\(b\)\(2\)\(i\)\(a\)](#)].

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<sup>1</sup> OCFS. (2013). *Adopting a Child from Foster Care in New York State: A Guide for Prospective Adoptive Parents*.

A handicapped child has a specific physical, mental, or emotional condition or disability that constitutes a significant obstacle to the child's adoption [18 NYCRR 421.24(a)(2)]. A hard-to-place child is defined as a child who has not been placed for adoption within six months of being freed for adoption, has not been placed for adoption within six months from the date a previous adoptive placement terminated, or who:

- Is one of a sibling group of two siblings or half-siblings who are free for adoption and it is considered to be necessary for them to be placed together. They must be placed together unless the LDSS determines after a careful assessment that such placement would be contrary to the health, safety or welfare of one or more of the children and thus detrimental to the best interests of one or more of the children and:
  - At least one of the children is five years of age or older; or
  - At least one of the children is a member of a minority group which is substantially over-represented in New York's foster care population in relation to the total population; or
  - At least one of the children is otherwise eligible for an adoption subsidy.
- Is the sibling or half-sibling of a child already adopted and it is considered to be necessary for the children to be placed together. They must be placed together unless the LDSS determines after a careful assessment that such placement would be contrary to the health, safety or welfare of one or more of the children and thus detrimental to the best interests of one or more of the children 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.
- 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 (i.e., they must be placed together unless the LDSS determines after a careful assessment that such placement would be contrary to the health, safety or welfare of one or more of the children and thus detrimental to the best interests of one or more of the children);
- Is eight years of age or older and is a member of a minority group that is substantially overrepresented in foster care vs. the state's total population
- Is ten years of age or older
- Has been with the same foster parents for 12 months or more prior to the execution of the signing of the adoption placement agreement, has developed a strong

attachment to his or her foster parent while in care and separation from the foster parents would adversely affect the child's development [18 NYCRR 421.24(a)(3)].

Adoption subsidy rates are based on the foster care board rates for the LDSS, although a LDSS has the option of paying between 75 and 100% of the board rate based on the adoptive parents' income. Adoption subsidy payments continue until the child reaches the age of 21, as long as the adoptive parent remains legally responsible for the child and continues to provide any support for the child [SSL §453(1)(c)].

Adoptive families also may be eligible for health insurance coverage for the child under the Medicaid program. This coverage continues until the child is 21.<sup>2</sup> See [Section D](#) of this chapter for more information on health coverage.

#### **a. Reimbursement of nonrecurring adoption expenses**

A nonrecurring adoption expense is a one-time payment to cover the expenses that are directly related to and necessary for the adoption of a child with special needs. These could include:

- Attorney's fees
- Cost of health and physical examinations
- Travel expenses
- Expenses to obtain certified copies of legal documents [18 NYCRR 421.24(d)(1)]

Generally, all children defined as handicapped, and children defined as hard to place with the exception of (1) those children not placed for adoption within six months of being freed for adoption, and (2) those children not placed for adoption within six months from the date that a previous adoptive placement was terminated, are considered children with special needs. Most parents who are eligible for an adoption subsidy will also qualify for reimbursement of nonrecurring adoption expenses. The agreement for this reimbursement must be signed *before* the adoption is finalized. Payments will be made *after* the child is adopted, for expenses incurred within two years of the date of the final adoption decree. Maximum reimbursement for adoption expenses is capped at \$2,000 per child [18 NYCRR 421.24(d)].

### **3. Finalizing the adoption**

The adoptive parents must file a petition to adopt in Family Court or Surrogate's Court [FCA §641; Domestic Relations Law §112(1)]. Their attorney will assemble the documents requested by the court to accompany the petition. The caseworker may provide information from the child's case record for a court proceeding without violating confidentiality requirements.

The caseworker must document in the child's case record why the decision was made to finalize the adoption at this time (e.g., the adoptive family has demonstrated a commitment and the capability to meet the child's needs over a period of time; all appeals of the birth

<sup>2</sup> OCFS. "Changes in Adoption Subsidy: Medicaid under the Provisions of COBRA, Subsidy Eligibility, and the Review and Approval of the Subsidy Agreement" ([09-OCFS-ADM-14](#)).

parents' TPR have been exhausted; birth and adoptive parents have come to an agreement about conditions of parental surrender and any future contact; (where eligible) the adoption subsidy has been approved; family court has set a finalization date).<sup>3</sup>

The discharge documentation also must indicate whether the adoptive family has been informed about post-adoptive services available in the community. If the family has not been informed, the caseworker must explain why. The record must include a description of the family's response to the offer of post-adoption services. For example, the case record may indicate that the family has joined a support group, that the family has an established support system, or that the family does not believe they will need services.<sup>4</sup>

This information must be consistent with case circumstances and must be supported by relevant and sufficient information in the progress notes and/or elsewhere in the record [18 NYCRR 421.3(c); 421.20; 428.5; 428.7(b)].

After the court grants the petition, the adoption is considered final and the case record may be closed. See **Section G** of this chapter for information on closing a case record in CONNX.

#### 4. Services for adoptive families

Discharge to adoption is an important permanency milestone. Adoption is a life-long journey that will present unique challenges. Adoptive families may need services and support in the near or distant future to sustain child well-being and permanency for the long-term. LDSSs are required to provide post-adoption services (e.g., counseling, parent training on how to care for children with special needs, clinical and consultative services, and coordinating access to community supportive services for the purpose of ensuring permanence). Post-adoption services may extend for up to three years from the date of the adoption decree [18 NYCRR 421.8(h)(2)(ii)].

The discharge documentation must indicate whether the adoptive family has been informed about post-adoptive services available in the community. If the family has not been informed, the caseworker must explain why. The record must include a description of the family's response to the offer of post-adoption services. For example, the case record may indicate that the family has joined a support group, that the family has an established support system, or that the family does not believe they will need services.

This information must be consistent with case circumstances and must be supported by relevant and sufficient information in the progress notes and/or elsewhere in the record.<sup>5</sup>

Some communities have support services designed specifically for adoptive families. Families also may find support through books, magazines, libraries, online, or other community resources. If services are needed after the three-year mark, adoptive families may also apply for preventive services through their local DSS to address family/child needs.<sup>6</sup>

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<sup>3</sup> OCFS. [Family Assessment and Service Plan \(FASP\) Guide](#), p. 8-80

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> OCFS. [Family Assessment and Service Plan \(FASP\) Guide](#), Chapter 8.

**a. Regional Permanency Resource Centers**

OCFS funds Regional Permanency Resource Centers throughout New York State that work to prevent post-adoptive and post-guardianship dissolutions/disruptions, to provide assistance to families so children may be cared for in their own homes by their adoptive parent(s) or legal guardian(s), and to strengthen post-adoptive and post-guardianship families to prevent foster care or other out-of-home placements.

The centers serve post-adoptive families and post-guardianship families. A post-adoptive family has finalized the adoption of their child through an agency (LDSS or VA), a private placement, or an international adoption service. Post-guardianship families include families with legal guardianship of the child with or without an approved KinGAP agreement.

Regional Permanency Resource Centers provide supportive services and connect families to resources such as parent training, peer support, mentoring, navigation for cross-system needs, therapeutic services referrals, counseling, respite care or other supports to help families address issues as they arise. A list of Regional Permanency Resource Centers is provided on the OCFS post-adoption services web page at [http://ocfs.ny.gov/adopt/post\\_adoption/](http://ocfs.ny.gov/adopt/post_adoption/)

**b. Temporary Assistance to Needy Families**

OCFS also funds a post adoption program for families who meet Temporary Assistance to Needy Families (TANF) eligibility requirements and who reside within any of the five (5) boroughs of New York City. Information regarding this program is provided on the OCFS post-adoption services web page at [http://ocfs.ny.gov/adopt/post\\_adoption/](http://ocfs.ny.gov/adopt/post_adoption/).

## D. Youth transitioning out of foster care

As adolescents grow into young adulthood, it is important that they possess the skills necessary to successfully make the transition into adulthood. For youth in foster care, it is even more critical that they possess these self-sufficiency skills, as many have few resources for support and guidance upon leaving care.

Helping to prepare youth for self-sufficiency may be achieved through a variety of methods. Youth may work one-on-one with the caseworker, foster parent, direct care worker, or an adult mentor. The youth may participate in formal education or training, attend life skills programs, take part in facility-sponsored groups, or use other community resources.

Caseworkers must conduct individualized assessments of each youth and develop a written plan to address the youth's specific needs and issues. The Life Skills Assessment within the FASP is required for all youth age 14 and older, regardless of their PPG. The assessment aids caseworkers in documenting the strengths, needs, and priorities of each youth in each of the following life skills categories:

- Forming and sustaining positive relationships
- Problem solving/decision making/goal planning
- Preventive health and wellness
- Education and support
- Vocational/career planning
- Employment skills
- Budgeting and financial management
- Housing
- Home management
- Accessing community resources

LDSSs and VAs may have other tools for caseworkers to use in assessing youth. OCFS recommends the Ansell Casey Life Skills Assessment as the preferred tool for assessing youth. The Adolescent Resources Services Network (ASRN), sponsored by OCFS, can provide training and support in the use of the Ansell Casey Life Skills Assessment.<sup>1</sup>

### 1. Transition planning

In general, youth “age out” of foster care when they reach their 18th birthday. Youth may consent to remain in foster care until they are 21 years old, however, provided they are enrolled in high school, college, or a vocational training program, or if they lack the skills to live independently [SSL §398-a(1); 18 NYCRR 441.2(a)(1)]. OCFS regulations require that

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<sup>1</sup> FASP Guide, Chapter 8, Foster Care Issues

LDSSs and VAs begin transition planning for a youth who is expected to leave foster care at least 180 days (six months) before the expected discharge [18 NYCRR 430.12(j)].

Because youth are allowed by law to self-discharge when they are between the ages of 18 and 21, it is possible for them to leave care at any time after they turn 18. This means it is possible for them to leave foster care before the transition planning process has begun. For this reason, transitioning planning for youth actually should begin much earlier.

To assist youth in making a successful transition out of foster care, LDSSs and VAs should begin transition planning discussions early in the child's placement that continue over the life of the case, increasing in detail as discharge gets closer. A timely and appropriate introduction to transition preparation will afford youth and workers ample opportunity for thorough planning and to take steps to put in place supports needed for the youth after discharge. It is the expectation that youth be assisted with thinking through what they need to be successful, thereby supporting them with understanding the possible negative ramifications of leaving care without a plan and supports in place.

In order for the transition plan to be effective and useful to the youth, it must be a result of collaboration between the caseworker and the youth. Agencies that are or will be involved in the youth's life also should participate in the transition planning process. For example, schools, mental health agencies, and juvenile justice systems can provide valuable information and insight into the development of the plan.

#### **a. Transition planning timeline**

The transition plan consists of two parts: the "Transition Plan" form ([OCFS-4922](#)) and the. Caseworkers must begin the Transition Plan six months (180 days) before the youth's 18th birthday, regardless of the youth's PPG [18 NYCRR 430.12(j)]

If a youth chooses to remain in foster care after age 18, the transition plan must be reviewed every six months, beginning when the youth is 18½ years old, until the youth leaves foster care. Any changes must be documented using the "Transition Plan Amendment for Youth Age 18-21" Form ([OCFS-3917](#)).



#### **Practice Tip:** *Challenges of transition*

Effective transition planning is essential for youth who leave foster care, as they face the significant challenges of becoming self-sufficient adults without a traditional family support system. Research has indicated that, among foster care "alumni:"

- Fewer than half received some education beyond high school; 20% completed a higher degree or certificate
- More than half had one or more mental health disorders, with 25% reporting post-traumatic stress disorder
- More than 22% had been homeless for at least one day after age 18
- One third had household incomes below poverty level; 33% had no health insurance

*Source:* Casey Family Programs. (2005). "Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study."

During the development of the transition plan, the caseworker must discuss certain key topics with the youth, including:

- The possibility of a trial discharge and re-entry into foster care
- Housing
- Health insurance
- Educational/vocational needs
- Availability of adult permanency resource(s)

The transition plan must be completed 90 days (three months) prior to the youth's 18th birthday, and must include any actions that are needed to implement the youth's discharge plan. The plan must be signed and dated by the youth, the case manager/case planner/caseworker, and the supervisor. If the youth does not sign the plan, a note must be entered explaining why. The youth must be given a copy of the completed plan, and a copy must be placed in the case record.

For details on completing transition planning forms, see "Transitional Planning with Youth for a Successful Discharge" ([15-OCFS-ADM-20](#)).

#### ***b. Health insurance coverage***

During the transition planning process, the LDSS must determine if the youth/young adult is eligible for Medicaid until age 21 or age 26.

Youth who were discharged from foster care at age 18 or older and were *not* covered by Medicaid at that time can be enrolled in Medicaid until the age of 21 regardless of income or employment status [[SSL §366\(1\)\(b\)\(5\)](#)].

Youth and young adults who are under 26 years of age; were in foster care at age 18; were enrolled in Medicaid upon discharge from foster care at age 18 or older; and are not otherwise eligible for Medicaid are eligible to continue receiving Medicaid coverage until the end of the month of their 26th birthday. A youth/young adult whose Medicaid coverage has lapsed may reapply for Medicaid at any time after final discharge from foster care until the age of 26, and, if eligible, can receive Medicaid through the end of the month of his/her 26th birthday [[SSL §366\(1\)\(c\)\(9\)](#)].

Child welfare staff should consult with the appropriate Medicaid staff within the LDSS to determine the appropriate Medicaid eligibility for youth/young adults who will be leaving foster care. Once the appropriate eligibility for Medicaid is determined, the youth/young adult is to be sent a letter explaining the youth/young adult's Medicaid eligibility and what the youth/young adult must do to maintain that eligibility. In the event of an unplanned final discharge, the appropriate letter must be sent by the LDSS to the youth's/young adult's discharge address. Template letters for this purpose are available for LDSSs and VAs.<sup>2</sup>

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<sup>2</sup> OCFS. (2015). "Patient Protection and Affordable Care Act and Medicaid to Age 26" ([15-OCFS-ADM-17](#))

**c. Health care proxy**

As part of the transition plan for youth exiting foster care between the ages of 18 and 21, LDSSs and VAs are required by federal law to inform and educate youth about the importance of designating a person to make health care treatment decisions on his/her behalf should the youth become unable to make health care decisions. The record must indicate whether the youth does not have a family member or does not want a family member to make such decisions. The LDSS or VA also is required to provide the youth assistance in obtaining and executing a health care proxy if the youth wishes to complete a health proxy form.<sup>3</sup>

**d. Required documents**

At discharge, in addition to a copy of the youth's transition plan, including any amendments, a youth age 18 or older who has been in foster care for at least six months must be, if eligible, given certain documents [18 NYCRR 430.12(I)]. These should be obtained as soon as possible after the child or youth is placed in foster care. For some documents, such as birth certificates and Social Security cards, the caseworker may need a copy of the court order placing the youth in foster care and a letter from the LDSS commissioner authorizing the caseworker to act on the youth's behalf. Youth over the age of 18 can obtain documents without this authorization.

*Original or certified copy of U.S. birth certificate*

LDSSs and VAs are required to obtain an official or certified copy of a youth's U.S. birth certificate.

There is no fee for obtaining a birth certificate for a youth in foster care who was born in New York State [Public Health Law §4174(4)]. For more information on ordering a copy of a birth certificate, see the New York State Department of Health web page ([https://www.health.ny.gov/vital\\_records/birth.htm](https://www.health.ny.gov/vital_records/birth.htm)). For information on obtaining a birth certificate for a youth born in New York City, see the New York City Department of Health and Mental Hygiene web page (<http://www1.nyc.gov/site/doh/services/birth-certificates.page>).

Undocumented youth will not have a U.S. birth certificate and may not be able to obtain a Social Security card, depending on their immigration status. Every effort should be made to obtain the youth's birth certificate from his or her birth country. In addition, LDSSs and VAs must follow the immigration relief assessment process for Special Immigrant Juvenile Status (SIJS). See [Chapter 15](#) of this manual.

For details about the application process, as well as guidelines for obtaining birth certificates for youth born outside of the U.S., refer to "Free Certified Copy of a United States Birth Certificate for Youth in Foster Care" ([17-OCFS-INF-01](#)).

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<sup>3</sup> OCFS. (2010). "Health Care Proxy for Youth Transitioning Out of Care" ([10-OCFS-ADM-12](#))

### *Social Security card*

If eligible, the youth must receive his or her social security card issued by the Social Security Administration. For information on how to obtain a copy of a Social Security card, see <http://www.ssa.gov/>.

### *Health insurance information*

The youth must be given the information necessary for him/her to receive coverage for health care, such as the type of insurance, ID numbers, etc.

### *Medical records and other case information*

The youth must be given a copy of his or her medical records in accordance with 18 NYCRR 357.3. More information on providing medical records is in the guidelines that accompany the OCFS-4922 form.

### *Photo identification card*

The youth must receive the youth's driver's license or identification card issued by the State in accordance with federal requirements. If the youth does not have a driver's license, he/she may be assisted in obtaining a non-driver ID card (NDID) from the local Department of Motor Vehicles office. The DMV website lists the [proofs of identification](#) that must be presented.

### *Documentation of foster care*

When a youth who has been in foster care for at least six months is being discharged from foster care, by reason of the youth reaching 18 years of age or older, the youth must be provided with a completed [OCFS-5184](#), "Foster Care Placement Verification Form." The form must be completed by an LDSS or VA worker and signed by the appropriate LDSS commissioner or his/her designee.

The following specific identifying information must be provided:

- Name
- Date of birth
- Current mailing address
- An LDSS or VA office information
- The youth's CONNECTIONS Person ID number (PID)
- The date of the youth's most recent placement into foster care
- The date of the youth's discharge from foster care

The youth must be given the completed OCFS-5184 form at discharge, and a copy must be kept in the youth's case record.<sup>4</sup>

A non-adopted former foster youth over the age of 18 may receive information from their foster care record, including health and medical records, educational records, social history, progress notes, and placement information in accordance with the standards set forth in 18 NYCRR 428.8(b)(2).

## 2. Adult services for youth who are developmentally disabled

When a youth who is developmentally disabled is receiving foster care services in a group home, agency boarding home, or a child care facility, and the youth is expected to continue in foster care, the LDSS or VA must inform the parents or guardian that foster care services will end when the youth reaches the age of 21 [SSL §398(14)(a); 18 NYCRR 441.14(b)(2)].

Parents or guardians must also be informed that OCFS and other appropriate state agencies can assist in determining services the youth will need after the age of 21. This written notice must be given to the parents or guardian within 30 days of the first service plan review following the child's 18th birthday [18 NYCRR 441.14(b)(2)].<sup>5</sup>

Upon written consent of the parents or guardian, a report containing the youth's name, condition, and other information will be forwarded by the LDSS or VA to the appropriate state agency for the purposes of obtaining a determination and recommendation of needed services in accordance with Mental Hygiene Law or Education Law [SSL §398(14)(b)]. Details on the criteria for submitting these reports to the appropriate agency are provided in OCFS regulations [18 NYCRR 441.14(b)(3)].

## 3. Discharge to APPLA

Discharge to Another Planned Permanent Living Arrangement (APPLA) with a permanency resource (formerly "independent living") is a permanency planning goal (PPG) for youth over the age of 16 who are expected to remain in foster care until they are discharged [18 NYCRR 430.12(f)(1)(i)]. In order to set an APPLA permanency planning goal, it must be determined that it is in the best interests of the child to remain in foster care and not return to his or her parent or be adopted until the child reaches age 18. The LDSS or VA must document a compelling reason why it would not be in the child's best interests to return home, be adopted, placed with a legal guardian or placed with a fit and willing relative.

The regulatory diligence of efforts standards for a child with an APPLA permanency planning goal set forth in 18 NYCRR 430.12(f) also apply to children deemed to be discharged to APPLA or deemed to have a goal of discharge to APPLA. A child is *deemed to be discharged to APPLA when the child is 16 years of age or older and has resided in foster care for at least 12 months within the past 36 months and has been discharged to parents or relatives. A child is deemed to have a goal of APPLA when the child is 16 years*

<sup>4</sup> OCFS. "Providing Foster Care Placement Verification to Youth 18 Years of Age or Older Exiting Foster Care" (18-OCFS-ADM-16)

<sup>5</sup> OCFS. (1986). "Notification and Referral for Handicapped Children in Foster Care Who Require Adult Services After Age 21" (86-OCFS-ADM-18).

of age or older and has resided in foster care for at least 12 months within the past 36 months and has a goal of discharge to parents or relatives or a goal of adoption.

For each youth discharged to APPLA, the LDSS or VA must identify any persons, services, or agencies that would help the youth maintain and support himself/herself and must assist the youth to make contact with such resources by making referrals or by counseling the youth about these referrals prior to discharge. These efforts must include helping the youth to reestablish contacts with parents, former foster parents, or other persons significant to the youth [18 NYCRR 430.12(f)(3)(i)(a)].

Active youth engagement in permanency planning and decision-making is essential. Planning must be guided by each youth's wishes, hopes, and dreams and respectfully honor their feelings about past and current relationships. For that reason, a core component of youth permanency practice is the active engagement of young people in:

- The permanency planning process
- The identification of key individuals who can play significant roles in their lives, including team members in planning and lifelong family connections
- Active recruitment for a permanent caregiver when the youth cannot safely return to birth or adoptive parents or extended family

The youth must have a medical exam before being discharged to APPLA unless he/she has had a medical exam within one year prior to discharge [18 NYCRR 441.22(n)].

All of this information must be included in the case record as part of permanency planning. The record also must show whether there are any concerns about the youth's safety after discharge. If such concerns exist, the caseworker must take steps to address them prior to discharge.

#### ***a. Services prior to discharge***

Youth who will be discharged to APPLA or deemed to have an APPLA goal must participate in structured programs of vocational training and independent living skills, including at least two days per year of formalized group instruction in independent living skills [18 NYCRR 430.12(f)(2)(i)(a)].

##### ***Vocational training***

Vocational training includes, but is not limited to, training programs in a marketable skill or trade or formal on-the-job training. Youth are deemed to meet the requirement for vocation training if they are enrolled in secondary education, taking academic courses, and receiving at least passing grades that if maintained would lead to graduation prior to the child's 20th birthday; or if they are enrolled in full-time study at an accredited college or university.

Vocational training must begin at the time the goal of APPLA is selected or deemed to be selected as a permanency planning goal or by the youth's 16th birthday, whichever is later. Training must continue without interruption until the youth is discharged. Training may be discontinued before discharge if the youth:

- Is employed in a paying job for which vocational training has prepared him/her;
- Is employed in a paying job at an hourly rate which would provide income, on a full-time basis, equal to or greater than 150% of the poverty level for a family of one as established by the U.S. Department of Health and Human Services; or
- Has passed a test approved or administered by the agency, school, or firm providing the training, or has otherwise successfully completed a course of vocational training as evidenced by a certificate or some other document demonstrating completion [18 NYCRR 430.12(f)(2)(i)(a)].

### *Independent living skills*

Independent living skills include formalized instruction, including supervised performance in job search, career counseling, apartment finding, budgeting, shopping, cooking, and house cleaning. Instruction in these skills must begin at the time APPLA is selected as the youth's PPG or by the youth's 14th birthday, whichever is later, and must continue without interruption until the youth is discharged, unless the youth has demonstrated competency in all of the above skills, either through a test approved by OCFS or through an assessment based on observation of the youth's performance [18 NYCRR 430.12(f)(2)(i)(a)].

### **b. Notice to child**

A child cannot be discharged to APPLA unless the child has received written notice of such discharge at least 90 days prior to the date of discharge and has had the goal of APPLA continuously for a six-month period immediately prior to discharge. However, the notice requirement does not apply where the child has voluntarily departed from the foster care placement without the consent of the LDSS and has been absent from that placement for 60 days [18 NYCRR 430.12(f)(3)(i)(b)].

### **c. Adult permanency resource**

Research increasingly supports the notion that having a permanent connection to an adult is important for the well-being of young people and can



### **Practice Tip:** *Identifying adult mentors*

Engage the youth in a discussion by asking questions such as:

- Who believes in you, compliments, and loves you?
- Who would you call at 2 a.m. if you were in trouble?
- Who paid attention to you, looked out for you, or cared about what happened to you?
- With whom have you shared holidays and/or special occasions?

Interview the youth's current and former foster parents, as well as group home staff, and legal staff, to determine with whom the youth currently has connections:

- Who regularly contacts the young person?
- Who has the youth had a special relationship with in the past?
- Who visits the youth and whom does the youth visit?

Source: National Resource Center for Permanency and Family Connections

serve a supportive role for youth at risk. Such relationships not only provide youth with resources and support, but also a connection to a network with potential benefits such as employment and housing opportunities.

OCFS regulations define an adult permanency resource as “a caring, committed adult who has been determined by a social services district to be an appropriate and acceptable resource for a youth and is committed to providing emotional support, advice and guidance to the youth and to assist the youth as the youth makes the transition from foster care to responsible adulthood” [18 NYCRR 430.12(f)].

Although OCFS regulations only require having a permanency resource identified for youth who have or are deemed to have the goal of discharge to APPLA, it is important for workers to assist all youth, regardless of PPG, with identifying the person(s) in the youth’s life that he/she can turn to when they need support.

Such relationships are characterized by guidance from an older, more experienced adult for a youth who has developed an emotionally important connection. Natural mentorships develop from the network of the youth’s relationships with adults who already know them. The process of identifying natural mentors is similar to the technique used to locate relatives or fictive kin when the youth first entered foster care.<sup>6</sup>

Caseworkers should work with the youth to identify caring, committed adults with whom he/she would like to establish or re-establish a connection. Consider former foster parents, former neighbors, parents of close friends, teachers, coaches, attorneys, judges, and work colleagues. Involving youth in activities, such as job fairs, teen conferences, employment mentoring, and life skill groups may also provide opportunities for youth to meet caring adults who might become permanent connections.<sup>7</sup>

When the permanency resource is identified, the caseworker should meet with the resource(s) and the youth to discuss the relationship and to establish boundaries that can help maintain the relationship.<sup>8</sup>

#### ***d. Housing***

No youth may be discharged to APPLA unless he/she has a residence other than a shelter for adults, shelter for families, single-room occupancy hotel, or other congregate living arrangement that houses more than 10 unrelated persons; and there is a reasonable expectation that the residence will remain available to the youth for at least the first 12 months after discharge. This requirement does not apply to a youth who is a member of the military or job corps or who is a full-time student in a post-secondary educational institution or where the youth has voluntarily departed from the foster care

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<sup>6</sup> Evan B. Donaldson Adoption Institute. (2011). “Achieving Permanency and Sustaining Connections for Older Youth in Foster Care.” Accessed at [www.adoptioninstitute.org](http://www.adoptioninstitute.org).

<sup>7</sup> Child Welfare Information Gateway. (2013). Enhancing permanency for youth in out-of-home care. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Accessed at <https://www.childwelfare.gov/pubPDFs/enhancing.pdf>

<sup>8</sup> OCFS. “Transitional Planning with Youth for a Successful Discharge” (15-OCFS-ADM-20)

placement without the consent of the district and has been absent from said placement for 60 days [18 NYCRR 430.12(f)(3)(i)(c)].

#### ***e. Trial discharge***

Every youth discharged to APPLA or deemed to have been discharged to APPLA must be placed on trial discharge. During a trial discharge, which must continue for at least six months, the youth remains in the custody of the LDSS commissioner. Trial discharge may continue until the youth is 21 years old, if the reassessment and service plan review indicate either the need for continued custody or a likelihood that the youth might need to return to foster care [18 NYCRR 430.12(f)(4)(i)(a)].

Youth leaving care at age 18 or older must also be given written notice of the option to re-enter foster care, should they find themselves in need of additional support [FCA §§1055(b)(i)(E) and 1089(d)(2)(viii)(C)].

#### ***After-care services***

During the period of a trial discharge, the LDSS must provide after-care services to the youth, including the same number of casework contacts that were required during the six months immediately preceding the youth's discharge.

In addition, the LDSS must provide services consistent with those identified in the case record that enable the youth to live independently after he/she is discharged from care. In the event that the youth becomes homeless during the period of trial discharge, the LDSS must assist him/her in obtaining housing. Temporary housing cannot be a shelter for adults, a shelter for families, a single-room occupancy hotel, or a congregate living arrangement that houses more than 10 unrelated persons.

If appropriate housing is not available within 30 days of the date the youth becomes homeless, the LDSS must place the youth in a suitable foster boarding home, agency boarding home, group home or institution. These requirements for housing provision do not apply where a court order terminates the LDSS's custody of the youth or after the youth reaches the age of 21 [18 NYCRR 430.12(f)(4)(i)(a)].

#### ***Documentation***

Each reassessment and service plan review during the trial discharge must show whether the child remains in the custody of the LDSS commissioner; the need for continued custody; the number and location of casework contacts with the child; the child's current living arrangements and service needs including, but not limited to whether the child has become homeless; the services provided during the past six months; and the services to be provided during the next six months. If the required number of casework contacts with the child has not been made, the case record must document that the primary reason for the failure to complete the contacts and also must also document the efforts made by the LDSS to contact the child and to encourage his/her participation [18 NYCRR 430.12(f)(4)(ii)(a)].

### **f. Supervision by LDSS**

After the LDSS's legal custody has been terminated by the court or by the LDSS's own action, the LDSS must maintain supervision of the youth until age 21 where the youth has been discharged to APPLA or is deemed to have been discharged to APPLA and had permanently left the home of his/her parents or relatives prior to termination of LDSS legal custody.

Supervision includes at least monthly contacts with the youth, including face-to-face contacts on at least a quarterly basis. If the youth has maintained adequate housing and income continuously for the previous six months, case contacts can be made quarterly, either face-to-face or by telephone. The requirement for face-to-face contacts does not apply to youth living 50 miles or more outside of the LDSS.

In all cases, the LDSS must provide referral to needed services, including income and housing services, with sufficient follow-up efforts to ensure that the youth has begun to receive the services for which he/she was referred. The contact requirements discussed in the previous paragraph are satisfied if the youth has refused contact or cannot be located during a 60-day period in which two face-to-face or telephone contacts and one in-home contact have not been successful. The mandated contact requirements discussed in the previous paragraph must resume when the youth is located and desires to cooperate with the district [[18 NYCRR 430.12\(f\)\(4\)\(i\)\(b\)](#)].

## **4. Re-entry into foster care**

Youth who exit from foster care at age 18 or older may experience significant difficulties in establishing themselves as independent adults. Under certain circumstances, a youth under 21 years may re-enter foster care through an action by the Family Court [[FCA §1091](#)].

Youth leaving care at age 18 or older because the youth did not consent to continue foster care placement or the youth has been discharged at age 18 or older to permanency (returned home; went to a relative's care, custody or guardianship; or was adopted) must be given written notice of the option to re-enter foster care, should they find that the permanency arrangement has been disrupted or dissolved.<sup>9</sup> A model written notice for youth aging out of foster care can be found as Attachment A to the OCFS Policy Directive "Re-entry into Foster Care by Former Foster Care Youth between the Ages of 18 and 21" ([11-OCFS-ADM-02](#)).

A motion for re-entry must be made within 24 months of the youth's discharge from care and there must be a compelling reason for the youth to return to the child welfare system [[FCA §1091](#)]. Forms related to filing a re-entry motion can be found on the [New York State Unified Court System](#) website. The court may grant only two separate re-entries to foster care [[FCA §1091\(3\)\(ii\)](#)].

If the LDSS files the motion, it must show by affidavit or other evidence that [[FCA §1091\(a\)](#)]:

<sup>9</sup> OCFS. "Re-entry into Foster Care by Former Foster Care Youth between the Ages of 18 and 21" ([11-OCFS-ADM-02](#)).

- The youth has no reasonable alternative to foster care
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that this is unnecessary or inappropriate
- Re-entry into foster care is in the best interests of the youth
- The youth has consented to re-enter foster care

If the youth makes the motion, it must show by affidavit or other evidence that [FCA §1091(b)]:

- The youth has no reasonable alternative to foster care
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that this is unnecessary or inappropriate
- Re-entry into foster care is in the best interests of the youth
- The applicable LDSS has consented to the re-entry or, if the LDSS has not consented, the motion must show why this refusal was unreasonable

When the LDSS refuses to consent to the re-entry of a youth formerly in foster care, the court may find and state, in writing, that the refusal is unreasonable. This finding would be based on evidence that [FCA §1091(c)(2)]:

- The youth has no reasonable alternative to foster care
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth
- Re-entry into foster care is in the best interests of the youth

The court will grant the motion to return a youth to the custody of the LDSS Commissioner or other authorized party upon finding that there is a compelling reason to return the youth to foster care; the court has not previously granted a subsequent motion for the youth's re-entry (i.e., the youth has not previously re-entered foster care, or has previously re-entered foster care only once); and taking into consideration the youth's compliance with previous orders of the court, including his/her participation in an appropriate educational or vocational program, if applicable.

**a. Foster care after re-entry**

When it is in the best interest of the youth, the youth being returned to foster care should be placed with the foster care parents with whom the youth was last placed, even if this placement exceeds the capacity of the foster home [SSL §398(6)(n)]. Factors to be considered in making such placements are set forth in 18 NYCRR 443.6(c). The county

of origin is responsible for placing the youth, regardless of the county the youth currently resides in or was previously placed in.

All regular foster care requirements that apply to youth under the age of 18 also apply to youth over the age of 18. This includes but is not limited to: making the necessary case work contacts with the child, parents or relatives, and caretaker [18 NYCRR 441.21]; providing comprehensive medical and health services [18 NYCRR 441.22]; and making assessments for parental support [18 NYCRR 422].<sup>10</sup>

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<sup>10</sup> OCFS. (2011). "Re-entry into Foster Care by Former Foster Care Youth between the Ages of 18 and 21" ([11-OCFS-ADM-02](#))

## E. Discharge of JD youth from OCFS custody

The OCFS Division of Juvenile Justice and Opportunities for Youth (DJJOY) and LDSSs should work collaboratively to develop discharge plans for youth who were placed in the custody of OCFS after being adjudicated as juvenile delinquents (JDs) in an Article 3 proceeding for youth who:

- Are in the custody of an LDSS at the time of placement with OCFS
- Have no identified viable discharge/release resource, and/or
- Have a release resource who needs intensive services in order to support the youth's return home or to the community

Placement of a juvenile delinquent with OCFS should last only as long as necessary to address the concerns that resulted in placement. In recent years, DJJOY has made a concerted effort to improve coordination and discharge planning activities for youth placed in an OCFS facility. These efforts are aimed at improving the likelihood of successful community re-integration through a coordinated partnership between DJJOY and the LDSS.

While the majority of youth placed with OCFS have an appropriate available placement resource and supports available when they return to their communities, for some there are no known viable placement resources or support plans to meet the youths' intensive needs.

Reasons for this may include:

- Parents' refusal to have the youth returned
- Existence of orders of protection prohibiting the youth from contact with family or household members
- Safety concerns expressed by families or evident from the circumstances
- Death or incarceration of parents

Youth also may sometimes remain in the legal custody of an LDSS, giving the LDSS an obligation to plan for permanency. Discharge planning for these youth requires intensive planning and cooperation between DJJOY and the LDSS. In some cases, legal action may be required for the LDSS to assume physical and legal custody of youth upon completion of their placement in OCFS custody.<sup>1</sup>

### 1. Discharge planning protocol

Within 60 days of the youth's placement in OCFS custody, the OCFS Community Service Team (CST) case manager staff will alert the appropriate LDSS if there may be no viable discharge/release resource for the youth. If the lack of a viable discharge resource becomes known later in the placement, the LDSS will be notified immediately by the CST Case Manager. A list of CST contacts is available on the DJJOY intranet at <http://ocfs.state.nyenet/djjoy>.

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<sup>1</sup> OCFS. (2010). "Child Welfare/Juvenile Justice Transition and Permanency Planning Protocol" ([10-OCFS-LCM-17](#))

Within 60 days of placement, the CST case manager will coordinate the scheduling of a meeting/conference call/videoconference with the LDSS, which will take place no later than 90 days from the date of placement. LDSS staff are strongly encouraged to participate in this meeting. In several LDSSs, an ongoing schedule of monthly discharge coordination meetings that involve LDSS, DJJOY, and Probation staff has been established for this purpose.

The CST case manager will have monthly contact with a designated LDSS staff person to provide updates and status reports. LDSS staff are encouraged to participate in monthly planning meetings to:

- Identify barriers to the youth returning home to the family and community
- Identify and assess alternative family resources for safety, stability, and commitment to the youth, as needed
- Secure a safe and timely discharge of the youth to the community with adequate resources and services to promote a successful transition
- Facilitate joint planning between DJJOY and LDSS staff for the purpose of assessing the youth's service needs and identifying appropriate services to be offered to the family

The LDSS will provide guidance to DJJOY staff on the appropriate resources available through contracted agencies or community-based service providers, if needed. The LDSS may include other county partners and/or contract agencies as appropriate in the planning meetings. Possible partners could include the local Youth Bureau and/or Juvenile Probation. Case-specific information shared in the planning meetings must be treated as confidential.<sup>2</sup>

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<sup>2</sup> Ibid.

## F. Discharge to adult residential care

Discharge to adult residential care is only appropriate when “child service needs” have been documented for factors other than the child’s behavior. In addition, the LDSS or VA must consider alternative discharge options, including discharge to parents or relatives and discharge to adoption [18 NYCRR 430.12(g)(1)(i)]. The LDSS Director of Social Services must review and approve the goal.

### 1. Preparation for discharge

For each youth discharged to adult residential care, the Service Plan must include the types of services and programs needed by the youth, specific programs which could meet his/her needs, and plans and activities to assist the youth in making the transition from his/her current program to the new program. In the case of youth in facilities operated or supervised by the Office of Mental Health (OMH) or the Office for People With Developmental Disabilities (OPWDD), the services provided in preparation for discharge by such facilities to such youth are deemed as fulfilling these requirements [18 NYCRR 430.12(g)(2)(i)].

The Service Plan must document goals or outcomes and services that are designed to assist with the transition and a summary of the efforts made and their results. Information concerning the services that have been provided to youth in facilities operated or supervised by OMH or OPWDD that is included in the uniform case record will be deemed to fulfill these documentation requirements [18 NYCRR 430.12(g)(2)(ii)].

### 2. Documentation in case record

The “Discharge to Adult Residential Care” section of the FASP prompts caseworkers to review the child’s safety in the adult residential facility into which he/she will be moving. This opens as a screen in CONNX and should be completed when a child (regardless of age) is anticipated to be discharged from foster care within the next 24 months. It should be individualized to reflect each child’s unique situation.<sup>1</sup>



#### **Practice Tip:**

#### *Child service needs*

Discharge to adult residential care may be appropriate for a child who has special needs for supervision or services that cannot be adequately met by his/her parents or caretakers, even with the aid of intensive services in the home. This need for services is the result of one of the following:

- The child has a diagnosed or diagnosable physical, mental, or emotional condition that severely impairs his/her ability to carry out daily, age-appropriate activities and which presents treatment needs that are too extensive or specialized to be provided by the child’s parents, relatives, or an adoptive parent.
- The child is eligible for admission to a facility operated or supervised by the OMH or the OPWDD.

[18 NYCRR 430.10(c)(5)(i)(a) and (d)]

<sup>1</sup> OCFS. [Family Assessment and Service Plan Guide](#), Module 8, “Foster Care Issues”

The caseworker must provide the name, address, and contact information for the facility to which the youth will be discharged.

A narrative must be completed describing the reasons why the youth is being discharged to an adult residential facility. The youth's view of this decision must be included, if possible. If there are any safety concerns related to the youth's discharge, the caseworker must include a description of these concerns and actions that have been taken or will be taken to address these concerns.

## G. Closing a case in CONNX

A foster care services case must be closed when the LDSS no longer has legal custody of the child. Termination of legal custody may occur, for example, because of adoption, return of the child to the legal custody of the parent, transfer of legal custody or guardianship relative or suitable person, death of child, or aging out at age 21.

Closing the Family Services Stage (FSS) stage also closes the case if the FSS is the only open stage in the case. The case cannot be closed if there is an open Family Services Intake, CPS Intake, or CPS Investigation. When closing the FSS will result in closing the case, the following message displays in CONNX: “Closing this stage will close the case. Do you wish to proceed?”

Only the case planner or the case manager may close the FSS. CONNX determines whether a Plan Amendment with an “Ending or Discharge” type exists for this stage, or if there is a FASP for this stage currently in “Pending” status or that has been approved within the last 30 days. If one of these criteria exists, the system proceeds with the stage closure. Because a case cannot be reopened once it is closed, it is essential that caseworkers enter all casework contacts and progress notes before starting the case closure process.

### 1. Plan amendment

The preferred method of closing an FSS/CWS is to enter a Plan Amendment under the “Ending or Discharge” type. This information also can be recorded as a part of a Reassessment FASP if one is scheduled within the next 30 days. Foster-care-related discharges include:

- Discharge to Parent, Relative or Other Caretaker
- Discharge to APPLA with a permanency resource (Independent Living)
- Discharge to Adult Residential Care
- Discharge to Adoption

Once all of the submission criteria are met, an “Approval Task To-Do” is generated by the system. The case planner or case manager saves this and the FSS closure is submitted to the Unit Approver for review and approval. Workers are not allowed to record progress notes for a stage when an approval for a stage closure is pending. Workers may only enter progress notes if they first invalidate the pending approval.

All PPGs and Program Choices in the stage are end-dated when the FSS closure is approved. CONNX notifies WMS that the FSS stage is closed and WMS updates the codes to reflect the stage closure. Although the WMS codes are updated, the worker must also close the case in WMS separately.<sup>1</sup>

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<sup>1</sup> CONNECTIONS Tip Sheet, [“FSS Case Closure”](#)

## 2. Stage information section closure

To close an FSS/CWS stage, the case planner or case manager may select the desired stage from the Stage Information section of the case record and select a closure. He/she may then submit the stage closure to the appropriate person(s) for approval.

When first displayed, the Stage Closure Question window asks the case planner or case manager if they want to stop the stage closure process and complete a Plan Amendment. If the answer is “No,” the case planner or case manager must complete a narrative describing the level of achievement of outcomes essential to the child’s safety, permanency and well-being.

The Stage Closure Question should be used as an alternative to completing a Plan Amendment or FASP only under specific circumstances defined by each LDSS or VA.<sup>2</sup>

## 3. Finalized adoption

Before a Discharge to Adoption case can be closed, the case manager must use the Finalize Adoption window in CONNX to change the adopted child’s name, to indicate whether that child will be receiving an Adoption Subsidy and, if so, to record the new WMS Case number and Client Identification Number (CIN) for that child. The new WMS Case number and CIN must be entered manually; there is no interface between CONNX and WMS for this information. Changing the child’s name through this functionality seals all links to the child’s former name and creates a new person record for the child.

Once the information in the Finalize Adoption section is saved, it is stored in the CONNX database in order to provide a link with the child both before and after the finalization of the adoption. All necessary documentation must be recorded before saving the Finalize Adoption section, as the information cannot be saved in process. The FSS stage should be closed as soon as possible in order to preserve the confidentiality rights of the legally freed child.<sup>3</sup>

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<sup>2</sup> [CONNECTIONS Case Management Step-by-Step Guide](#), p. 20-8

<sup>3</sup> *Ibid.*, p. 4-36

## Chapter 14: Out-of-State Placements

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## Chapter 14

# Out-of-State Placements

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The Interstate Compact on the Placement of Children (ICPC), originally written in the late 1950s and subsequently adopted nationwide, requires that children who are placed in another state for foster care or adoption are afforded the same protections, and the same financial and jurisdictional safeguards, as children placed within the state [[SSL §374-a\(1\), Article I](#)]. All 50 states, the District of Columbia, and the U.S. Virgin Islands have enacted this uniform law, with New York being the first state to enact the ICPC in 1960. By enacting the ICPC, New York State agreed to follow procedures outlined in the ICPC when it either places a child subject to the jurisdiction of the ICPC in another state or accepts an interstate placement from another state.

## A. Requirements for ICPC placements

For ICPC purposes, the “sending state” is the state from which the child is sent; the “receiving state” is the state to which the child is being sent; and the “sending agency” is the state, local government, private agency or person which sends, brings or causes to be sent or brought the child to another state [SSL §374-a(1), Article II]. In New York, LDSSs and VAs that place a child in another state are “sending agencies.”

### 1. Legal protections and confidentiality

The ICPC provides legal protection to both the child and the sending agency by allowing the sending agency to obtain an evaluation or home study of the proposed out-of-state placement [SSL §374-a(1), Article I]<sup>1</sup> and also to maintain jurisdiction of the child [SSL § 374-a(1), Article V(a)], including the ability to visit the child and obtain regular progress reports on the child’s adjustment and progress. Any reports or information received from the out-of-state placement must be treated with the same confidentiality as if the child had been placed within New York State [SSL §372(3)]. Any purchases of service from an out-of-state agency must comply with the purchase of services regulations [18 NYCRR 405.1(a)].

### 2. Conditions for ICPC placement

The ICPC must be applied when a child is sent to another state under one of the following conditions:<sup>2</sup>

- The child is being sent to a pre-adoptive placement.
- The child is being placed into foster care including foster family boarding homes, group homes, or institutions.
- The child is being placed with a parent or relative from the care and custody of the LDSS commissioner [SSL §374-a(1), Article II(d)].
- The child has been adjudicated as a juvenile delinquent and is being placed in an institution in another state [SSL §374-a(1), Article VI].
- The child’s approved intrastate placement will be relocating as a family unit to another state [ICPC Regulation No. 1].

The ICPC does not apply to out-of-state placements in medical and/or mental health facilities, boarding schools or institutions that are primarily educational in nature [SSL §374-a(1), Article II(d)].

Placements made directly by the following with any such relative or non-agency guardian also are not subject to the ICPC:<sup>3</sup>

- Parent

<sup>1</sup> OCFS “Interstate Compact on the Placement of Children (ICPC) Procedures to Request an ICPC Priority Home Study.” (97-LCM-16)

<sup>2</sup> American Public Human Services Association (2014). *Guide to the Interstate Compact of the Placement of Children*.

<sup>3</sup> Ibid.

- Step-parent
- Grandparent
- Adult sibling
- Adult aunt or uncle; or
- Child's legal guardian [SSL §374-a(1), Article VIII(a)].

ICPC does not apply when a child is placed with a non-respondent parent from whom the child was not removed, the court has no evidence that the non-respondent parent is unfit, and the court is not seeking to retain jurisdiction over the case [ICPC Regulation No. 3].

Prior to placing the child out of state, the sending state must comply with the ICPC and applicable laws in the receiving state [SSL § 374-a(1), Article III (a)]. The ICPC requires the sending state to provide the receiving state with written notice of the intent to place a child in the receiving state and submit required documentation as addressed in section B below.

The notice must include the following [SSL§ 374-a(1), Article III(b)]:

- Name, date, and place of birth of the child
- Identity and address of parent(s) or legal guardian(s)
- Name and address of proposed receiving person, agency, or institution
- Statement of reasons for the out-of-state placement and evidence of the legal authority under which the placement is being made

The child cannot be transported to the out-of-state placement until the receiving state notifies the sending state in writing that the placement is acceptable and does not appear to be contrary to the interests of the child [SSL 374-a(1), Article III(d)].

### **3. Penalty for illegal placement**

If the sending agency does not follow the requirements of the ICPC, it will be considered a violation of law in both the sending and receiving states, and thus punishable or subject to penalty according to law in either state. Any liabilities incurred during the illegal placement will be the responsibility of the sending state, and an illegal placement could result in the suspension or revocation of the sending agency's authorization to care for or place children [SSL § 374-a(1), Article IV].

## B. Procedures for ICPC placements

The ICPC requires that each state have a Compact Administrator, and the ICPC Unit at OCFS Home Office is responsible for administering the ICPC in New York [SSL §374-a(1), Article VII]. The unit serves as the central clearing point for all referrals for interstate placements and is authorized to conduct the necessary investigation of the proposed placement and to determine whether or not the placement is contrary to the child's interests. After the placement is approved and the child is moved into the state, the ICPC Unit is responsible for monitoring the placement as long as it continues.<sup>1</sup>

### 1. National Electronic Interstate Compact Enterprise (NEICE)

In 2013, The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) announced the development of the National Electronic Interstate Compact Enterprise (NEICE), a real-time, online data system for states to share records and exchange information. This centralized database was designed to improve the efficiency of the ICPC process. Recognizing the importance of an expedited and more efficient ICPC process, New York State is now joining the many other states utilizing NEICE to ease workloads and create better outcomes for children.

More information on NEICE can be found at <https://aphsa.org/AAICPC/AAICPC/NEICE.aspx>.

All LDSSs and VAs processing ICPC cases must do so using NEICE. Exceptions to this requirement are for private, independent, or non-public agency adoptions, for SED placements, or for parents seeking residential placement of their children. In these situations, ICPC requests will continue to be processed outside of the NEICE system.

Prior to gaining access to NEICE, designated users must complete certain requirements necessary to address appropriate system usage, security, and confidentiality. All individuals designated to access NEICE in any capacity must complete these steps before initially accessing NEICE. OCFS will authorize access to a potential user only after verification that all steps have been completed.<sup>2</sup>

### 2. Processing an out-of-state placement

The process of making an out-of-state placement follows these steps:

1. The local sending agency completes a written notice (Form [ICPC-100A](#)) with supporting documentation applicable to the particular category of placement, for example, foster care, agency adoption or private adoption, and sends it to the ICPC Unit at OCFS, which then forwards it to the ICPC unit of the potential receiving state. A social history and case plan must also be prepared and sent to the OCFS ICPC Unit for forwarding to the ICPC unit of the potential receiving state.

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<sup>1</sup> Ibid.

<sup>2</sup> OCFS. "Requirements for Use of the National Electronic Interstate Compact Enterprise (NEICE)" ([18-OCFS-ADM-17](#))

2. Upon receiving the placement proposal, the potential receiving state's Compact Administrator will review the information packet and then forward it to the appropriate local agency, usually a public or private child welfare agency.
3. After the potential local receiving agency has completed any necessary preparation work (such as a home study or similar evaluation by the law of the receiving state), the potential local receiving agency reports its findings to the Compact Administrator of the receiving state with a recommendation of whether or not the placement should proceed on the basis that placement does not appear to be contrary to the interests of the child.
4. If the local receiving agency's recommendation is favorable, the receiving state's Compact Administrator determines whether to approve the placement on the basis that the placement does not appear to be contrary to the interests of the child. In New York, where a child is placed into this state for the purpose of adoption, the New York ICPC (OCFS) must deny the ICPC application of a proposed placement that fails to comply with the fee standards set forth in SSL §374(6) [[SSL §374-a\(11\)\(b\)](#)].
5. The receiving state's Compact Administrator notifies the sending state's ICPC Unit (OCFS) of the approval or denial of the placement, and copies of the recommendation are forwarded to the sending agency. If the placement is denied, the local sending agency may have the opportunity to rectify deficiencies so that the placement can move forward. In addition, the sending state may request reconsideration of the denial within 90 days of the denial [[ICPC Regulation No. 2](#)].

The sending state may decide not to place the child in the receiving state at any point in this process. Processing times for ICPC requests vary, depending on the placement type.

After the child has been placed, the local sending agency must notify the receiving state by completing Form [ICPC-100B](#), "Report on Child's Placement Status." This form should also be completed by the local sending agency and send copies to both the OCFS ICPC Unit and the receiving state when there are any changes in the child's status.

### **3. Home study requests from other states**

The OCFS ICPC Unit is responsible for receiving and processing home study requests from other states that are considering a placement within New York State. The OCFS ICPC unit forwards these requests to the LDSSs in which the prospective foster or adoptive parents reside [[18 NYCRR 421.14\(g\)\(1\)](#), [18 NYCRR 443.2\(g\)\(2\)](#)].

The LDSSs must conduct a home study (or contract with a VA to perform this task) and return the completed home study to the OCFS ICPC Unit within 60 days of the receipt of the request from OCFS. The home study is conducted using the same standards as the home study conducted for any prospective foster boarding home or prospective adoptive home [[18 NYCRR 421.14\(g\)\(2\)](#) and (3), [18 NYCRR 443.2\(g\)\(3\)](#) and (4)].

If the LDSS contracts with a VA to conduct the home study, the cost of the home study will be charged back to the LDSS in which the prospective foster or adoptive parent(s) reside, and that cost is then subject to state reimbursement as a foster care or adoption service, depending on the type of proposed placement [[18 NYCRR 421.14\(g\)\(2\)](#); [18 NYCRR 443.2\(g\)\(3\)](#)].



### ***Resources for caseworkers***

The following information is available on the ICPC page of the OCFS website ([http://ocfs.ny.gov/adopt/interstate\\_compact\\_Placement\\_of\\_Children.asp](http://ocfs.ny.gov/adopt/interstate_compact_Placement_of_Children.asp))

- Links to the full text of the ICPC, including current regulations
- Checklists specific to caseworkers, agencies, attorneys, parents/guardians, and school districts
- Checklists specific to the type of placement
- Links to ICPC forms and instructions
- Contact information for NYS ICPC staff

## Chapter 15: Foster Care Eligibility and Financing

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## Chapter 15

# Foster Care Eligibility and Financing

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It is essential for LDSSs to determine eligibility for foster care so federal reimbursement may be claimed in cases that meet federal eligibility criteria. The federal government will reimburse 50% of the cost of foster care maintenance for eligible children, plus certain related administrative costs. Correct eligibility determination and documentation help to provide the funding necessary to support foster care programs in both LDSSs and statewide.

The funding mechanism for foster care is a combination of federal (for those cases eligible for federal reimbursement), state and local funds. Understanding the basic funding mechanisms helps caseworkers appreciate the importance of making correct and timely eligibility determinations, and the consequences of failing to meet those eligibility requirements.

**Practice Tip:*****Why is this important to your work in child welfare?***

You may be asking, “Why is this important to me? My most important job is to see that children receive the services and care necessary for their safety and permanency.”

While this is true, many of the state mandates that you deal with on a daily basis also involve requirements of Title IV-E of the Social Security Act, which is the primary federal funding source for foster care. Adherence to these standards enhances safety and permanency for individual children. In addition, the fiscal consequences for not complying with federal eligibility requirements are significant to the local community. When federal reimbursement is lost, the financial burden shifts entirely to the state and locality. This can result in the locality paying a significantly higher proportion of the costs of foster care.

## A. Eligibility determinations

OCFS has issued, and regularly updates, the [Eligibility Manual for Child Welfare Programs](#). The Eligibility Manual covers the relevant federal and state requirements, the procedures for determining eligibility, the proper completion of the relevant forms, and the necessary supporting documentation. LDSS staff with the responsibility for making eligibility determinations should consult the Eligibility Manual for detailed information in these areas.

### 1. Eligibility criteria under Title IV-E

The first step is to determine eligibility for reimbursement under Title IV-E of the Social Security Act (Title IV-E), which involves both court related and non-court related standards, including financial eligibility. This is done by completing the “Initial Foster Care Eligibility Checklist” ([Form LDSS-4809](#)). A separate checklist must be completed for each child entering foster care, even if they are from the same family. A [documentation file template](#) available on the OCFS website provides a list of the documents and authorizations that must be collected to support the eligibility determination.

It is important that all documents that support Title IV-E eligibility be maintained in an accessible Title IV-E eligibility file.

#### **a. Eligibility of child**

There are eight Title IV-E eligibility requirements related to the child in care, all of which must be met and appropriately documented:

**Age:** Was the child under age 18 on the date of the court order or voluntary placement agreement?

**Citizenship:** Is the child a U.S. citizen or qualified immigrant?<sup>1</sup>

**Legal Authority:** Is the child in foster care (in the care and custody or custody and guardianship of a LDSS) pursuant to a court order or voluntary placement agreement?

**Contrary to Welfare/Best Interests:** For a child placed into foster care by court order, does the initial court order sanctioning removal make a case specific finding that it would be contrary to the welfare of the child to remain in the child’s home, or that removal from the home was in the child’s best interests?

**Reasonable Efforts to Prevent Removal:** Does a court order issued within 60 days of removal make a case specific finding that reasonable efforts were made to prevent removal, including where supported by the facts that no efforts were reasonable, or that reasonable efforts were not required in the case due to statutorily specified circumstances?

**Living with a Specified Relative:** Was the child living with a parent or specified relative at any time during the six months prior to the month of the filing of the court petition that led

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<sup>1</sup> A “qualified immigrant” is an immigrant deemed eligible for services under the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Under PRWORA, assistance and services that are reimbursed by the federal or state governments are available only to citizens and qualified immigrants. See *Eligibility Manual for Child Welfare Programs*, Appendix B

to the child's removal or the signing of the voluntary placement agreement placing the child into foster care?

*Parental Deprivation:* Was the child deprived of parental support during the month of removal because of either absence from home, incapacity of parent (physical or mental), unemployment or under employment, or death of a parent?

*AFDC Financial Eligibility:* Would the child have been eligible for federal Aid to Families with Dependent Children under the eligibility standards in effect on July 16, 1996?

Each requirement is explained in detail in the Eligibility Manual, along with the acceptable documentation for each.<sup>2</sup>

The initial eligibility determination must be completed within 30 days [18 NYCRR 404.1(d)(1)(i)]. If the child meets all eight of the criteria, the child's case is eligible for reimbursement under Title IV-E. This is often referred to as the child or the child's foster care case being considered "IV-E eligible."

### **b. Eligibility of home or facility**

The home or facility in which the child is placed must also meet certain federal criteria. If the child is placed in a foster home, the home must be fully approved or certified pursuant to state law. An otherwise Title IV-E eligible foster child placed in an emergency approved or an emergency certified foster home is not eligible for Title IV-E until the foster home is either fully approved or fully certified. If the child is placed in a residential facility, the facility must be certified or licensed pursuant to state law. Youth placed in detention or other secure facilities are not eligible for payments under Title IV-E because they do not satisfy the federal definition of a child care institution for Title IV-E purposes.

Title IV-E reimbursement is not available for placements in institutions of more than 25 beds that are operated by a public agency, such as OCFS or an LDSS. This numerical limitation does not apply to residential facilities operated by VAs. If the child is placed in a setting for which Title IV-E reimbursement is not available, Title IV-E reimbursement cannot be claimed for the time period of such placement. The child does not cease to be Title IV-E eligible, however, and Title IV-E may be claimed for the child when he/she is placed in a setting for which Title IV-E reimbursement is available.

### **c. Redetermination of Title IV-E eligibility**

OCFS regulations require that programmatic eligibility be re-determined every six months [18 NYCRR 404.1(d)(2)(i)] and financial eligibility must be re-determined every 12 months [18 NYCRR 404.1(d)(2)(ii)]. Programmatic eligibility entails determining and documenting that foster care is still necessary.

Federal standards require that Title IV-E foster care eligibility be redetermined every 12 months. The annual re-determination of Title IV-E eligibility is addressed by completing

<sup>2</sup> OCFS. (2016). *Eligibility Manual for Child Welfare Programs*, Chapter 1, Part A

“Redetermination of Title IV-E Eligibility Checklist (Foster Care)” ([Form LDSS-4810](#)). The criteria that must be addressed at redetermination are:

- *Age*: Is the child under age 18 or, if over age 18, is the child in foster care and does he/she satisfy one of the following criteria?
  - Completing secondary education or a program leading to an equivalent credential;
  - Enrolled in an institution which provides post-secondary or vocational education;
  - Participating in a program or activity designed to promote, or to remove barriers to, employment;
  - Employed for at least 80 hours per month; or
  - Incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated written or recorded information in the child’s case plan.
- *Legal Authority/Judicial Review*: Is there a current court order giving the LDSS care and custody or custody and guardianship of the child or, for a voluntary placement, did a court review the placement within 180 days of the placement and determine that continued placement was in the child’s best interests?
- *Reasonable Efforts to Finalize Permanency*: Where the placement is due to a court order, has the court made a case specific determination within 12 months of the date the child entered foster care and every 12 months thereafter that reasonable efforts have been made to finalize the child’s permanency plan or return the child home safely?<sup>3</sup>

Title IV-E reimbursement is also available for youth who entered foster care before age 18, left foster care, and then wish to re-enter foster care pursuant to Section 1091 of the Family Court Act (FCA). In such cases, the “Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist” ([Form LDSS-4415](#)). The eligibility criteria are similar to those for initial entry into foster care, but several of the categories are not relevant for re-entry eligibility determinations.<sup>4</sup>

## 2. Eligibility criteria under TANF-EAF

Regardless of whether the child is eligible for Title IV-E funding, the LDSS must also determine whether the child is eligible for funding under Temporary Assistance to Needy Families - Emergency Aid to Families (TANF-EAF).

The “Initial Foster Care Eligibility Checklist” (Form LDSS-4809) is also used to determine TANF-EAF eligibility. A [documentation file template](#) available on the OCFS website provides a list of the documents and authorizations that must be collected. For IV-E eligible children, TANF-EAF will cover certain costs not covered by Title IV-E, such as tuition and social

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

services, such as counseling. For children eligible for TANF-EAF but not eligible for IV-E, TANF-EAF will also cover foster care maintenance costs. Failure to determine and authorize TANF-EAF at the time the case is opened precludes subsequent authorization for TANF-EAF [18 NYCRR Part 372].<sup>5</sup>

Eligibility for TANF-EAF requires that the need for services is due to an emergency, including:

- Court-ordered removal of a child under Article 10 of the FCA (Child Protective proceedings)
- Court-ordered placement of a child under Article 3 of the FCA (Juvenile Delinquency proceedings), Article 7 of the FCA (Person in Need of Supervision proceedings) or Article 10-C of the FCA (Destitute Child proceedings)
- Voluntary Placement Agreement [SSL §384-a]
- Voluntary Surrender Agreement [SSL §384]
- Court approval of a Voluntary Placement Agreement or Voluntary Surrender Agreement [SSL §358-a]
- Court order terminating parental rights [SSL §384-b]
- Court order placing an unaccompanied refugee minor [FCA §651(b)]

Other TANF-EAF eligibility factors include:

- *Citizenship*: Is the child a U.S. citizen or qualified immigrant?
- *Living with a Specified Relative*: Was the child living with a parent or specified relative at any time during the six months prior to foster care placement?
- *No Previous EAF Authorization*: Has there been a previous EAF authorization within the previous 12 months, other than one within the previous 30 days or connected with the same emergency?
- *Insufficient Resources*: Does the child lack immediately accessible income or resources to meet the child's needs?
- *Need for Services Due to Reasons Other Than Refusal of Employment/Training*: Is the child's need for foster care due to a reason other than the parent/specified relative having refused employment or training without good cause?
- *Need for Services Due to Reasons Other Than Mismanagement of Temporary Assistance Grant*: Is the child's need for foster care due to a reason other than the parent/specified relative's mismanagement of a Temporary Assistance grant?

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<sup>5</sup> OCFS. (2000). "Temporary Assistance to Needy Families (TANF) Eligibility, Data Reporting and Claiming Requirements for Foster Care Cases" ([00-OCFS-ADM-3](#))

The Eligibility Manual explains each requirement in detail and acceptable documentation for each.<sup>6</sup> The initial eligibility determination must be completed within 30 days of the child's entry into foster care [18 NYCRR 404.1(d)(1)(i)]. If the child meets all of the criteria, the child's case is eligible for reimbursement under TANF-EAF.

TANF-EAF may be authorized only once within a 12-month period, and it remains in effect until the emergency ends. There is no redetermination of TANF-EAF. The emergency is considered to have ended when one of the following occurs:

- The child is discharged from foster care with no need for continued services
- The child is freed for adoption and placed in an adoptive home
- The child is placed in adult residential care
- The child goes on trial discharge with a goal of "another planned living arrangement with a permanency resource" (APPLA)
- The child reaches 18 years of age

### 3. Eligibility for Medicaid

All children in foster care (other than non-qualified immigrants, who are not eligible for Medicaid) are categorically eligible for Medicaid if they are Title IV-E eligible or eligible for TANF-EAF. Accordingly, a separate eligibility determination for Medicaid is not required for children entering foster care.<sup>7</sup>

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<sup>6</sup> OCFS. (2016), *op cit.*, Chapter 2

<sup>7</sup> *Ibid.*, Chapter 1, Part A

## Chapter 16: Special Circumstances

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# Chapter 16

## Special Circumstances

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### A. Minor parents in foster care

In general, minor parents and their children should be placed in the same foster family home or residential facility and custody of the minor parent's child should remain with the minor parent. The same principle should be applied if a foster child gives birth while in foster care.

The LDSS may seek temporary legal custody of a minor parent's child, if the LDSS determines that the minor parent poses a danger or threat to her child's well-being or the minor parent voluntarily relinquishes custody of her child, as outlined below. For detailed information on Title IV-E eligibility and adoption implications for minor parents in foster care, see OCFS Policy Directive "Minor Parent/Infant Foster Care and Adoption" ([94-ADM-12](#)).

#### 1. Protective situations

Seeking and obtaining temporary legal custody of a child of a minor parent in foster care, while still allowing the minor parent to retain physical custody, must be made carefully and thoughtfully. Because such a decision is a legal "removal," this decision must be based on the same standards and criteria for removal as in any other case. Factors such as the minor parent's age, previous history, perceived abilities, etc. should never be the sole criteria for taking legal custody of the child of a minor parent in foster care.

In some cases, despite the need for protective custody of the child, it is determined that the best interests of both the minor parent and her child require them to be kept physically together. In order to safely make a determination to place or keep a minor parent and his or her child together in a foster care placement, despite an abuse or maltreatment situation, caseworkers must take into consideration the level of risk to the child of the minor parent and how that risk might be offset by presence of foster parents or residential program staff. The abilities and capabilities of the foster care provider to ensure the necessary measure of protection must be evaluated before this type of placement is made or continued.

The Family Court may also order that the custody of the child remain with the minor parent and require the LDSS to exercise supervision [[FCA 1057](#)].

There may be some instances, however, in which concern for the safety of the minor parent's child justifies the LDSS to obtain temporary legal custody of the child and to place the minor parent and the child in separate foster care facilities.

#### 2. Non-protective situations

The minor parent in foster care may temporarily relinquish legal custody by signing a voluntary agreement. As a matter of policy and practice, LDSSs are discouraged from taking custody by voluntary agreement and a minor parent cannot be forced to sign a voluntary placement of her child [[SSL §384-a\(2\)\(c\)\(ii\)](#)]. Caseworkers should explore with minor

parents in foster care what supports and services are needed to allow custody to remain with them, and then make reasonable efforts to provide these supports and services.

When a youth in foster care is pregnant, the caseworker should develop a placement plan with the expectant mother prior to the birth of the child. This may help avoid the separation of the minor mother and baby. If a minor parent and her baby are not placed together, a caseworker must document why it was not possible to place the parent and child together or why it was necessary to seek care and custody of the child [[18 NYCRR 430.10\(b\)\(5\)](#)].

Reasonable efforts must be made to prevent the minor parent from relinquishing custody, and these efforts must be documented in the case record. Caseworkers should consult with supervisory personnel and LDSS attorneys for help in making appropriate decisions regarding the children of minor parents in foster care, obtaining custody of such children, and determining the appropriate placement venue.<sup>1</sup>

A minor parent may file a proceeding in court for support on behalf of her child [[FCA §580-302](#)].

### **3. Fathers in foster care**

A father who is in foster care may be able to visit his child or to seek custody of the child, if the court determines it is in the child's best interest. For more information see [Chapter 5](#) of this manual.

For more information on Services for Children, including both the minor parent and the minor parent's child if the child is in LDSS custody, see [Chapter 11](#) of this manual.

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<sup>1</sup> OCFS. "Minor Parent-Infant Foster Care and Adoption" ([94-ADM-12](#))

## B. Children of undocumented immigrants

No child who is a United States citizen or who is legally residing in the United States can be denied services because of the immigration status of the child's parent(s) or custodial relative [18 NYCRR 403.7(d)]. In addition, a child who is not lawfully residing in the United States is still entitled to referral services, child protective services, and foster care [18 NYCRR 403.7(b), SSL §§122(2) and 398-e].

Sometimes undocumented parents or custodial relatives do not seek the services for their children due to either a language barrier or the fear that accessing such services will result in deportation. LDSSs or VAs may not report to federal immigration enforcement personnel in instances where:

- Undocumented children and families are receiving information and referral services, child protective services or foster care services; and
- The undocumented parent(s) or custodial relative(s) of a child receiving social services is lawfully residing in the United States or a citizen of the United States.<sup>1</sup>

### 1. Special Immigrant Juvenile Status (SIJS)

A child who is an undocumented immigrant and has been placed in foster care may be eligible to apply for Special Immigrant Juvenile Status (SIJS). This status is available to youth under the age of 21 who are under the jurisdiction of juvenile courts or Family Court and have been placed under the custody of state agencies, or who have been placed under the custody of an individual or entity appointed by a state or juvenile court.<sup>2</sup> SIJS status allows the child to obtain lawful residence, apply for a green card, and receive work authorization.

#### a. *SIJS eligibility*

In order to be eligible to receive SIJS:<sup>3</sup>

- The child must be unmarried and under the age of 21 at the time of application
- There has been a finding in Family Court that the child was abused, neglected or abandoned
- The court has determined that due to the abuse, neglect or abandonment, reunification with the child's parent or guardian is not viable, and that it would not be in the child's best interest to return to the child's country of origin or last known residence

The court order submitted in the SIJS application must establish that the child has been declared a dependent of the Family Court, that the court has placed the child in the

<sup>1</sup> OCFS. "Providing services to children of undocumented immigrants" ([17-OCFS-ADM-06](#)).

<sup>2</sup> OCFS. "Special Immigrant Juvenile Status (SIJS)" ([11-OCFS-ADM-01](#)).

<sup>3</sup> Ibid.

custody of an LDSS or VA or the child has been placed in the custody of an individual or entity by the state or juvenile court.

The child must be in foster care at the time of application and remain in foster care until SIJS has been obtained

An undocumented child may apply for SIJS status when he/she is in the process of being adopted or is in a guardianship agreement. An arrest or the conviction of a crime may preclude the child from SIJS eligibility, depending on the nature of the crime and time elapsed since the crime occurred.

### ***b. Implications for caseworkers***

The application process must be completed *prior to the child leaving foster care*. As it can take a year or more for both SIJS and lawful permanent residency to be processed and approved, it is imperative that caseworkers identify a potentially eligible child and refer him/her to an immigration attorney as soon as possible. SIJS may be the child's only chance at obtaining legal residency.

Workers must assess the citizenship/immigration status of a child during Title IV-E eligibility determination, and this might be the first opportunity for caseworkers to identify a child that may be SIJS eligible and begin the application process.<sup>4</sup> An additional indicator of non-lawful immigration status could be the lack of a Social Security number for the child or the absence of a birth certificate issued within the United States. If the child is determined to be SIJS eligible, this fact should be documented in the FASP or SPR.

For youth who are not U.S. citizens or permanent lawful residents, the consulate of the youth's country of origin may be able to provide various types of assistance, including obtaining necessary documents, locating family members, and facilitating communication for youth or families who speak uncommon foreign languages and dialects. Consular officials are representatives of the foreign government and have no official relationship with federal immigration authorities. If, however, a youth or members of the youth's family may be seeking refugee status or political asylum, that fact should not be disclosed to the foreign consulate.<sup>5</sup>

### ***c. SIJS application process***

If the LDSS determines that the child may be eligible for SIJS, the child should be referred to an immigration legal expert for further screening, as submitting an application alerts the United States Citizen and Immigration Services (USCIS) Office to the child's illegal status. The child should complete the following steps, with the assistance of the LDSS or VA caseworker and an immigration legal professional:

1. Collect the following documentation:
  - Birth certificate

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

- Passport
  - Court orders
  - Medical examination
  - Other identification papers
2. File the both of the following applications, available on the [USCIS website](#):
    - Application for Special Immigration Juvenile Status (Form I-360)
    - Application for Legal Permanent Residency (Form I-485)
  3. The child may be eligible for a fee waiver. If applicable, file the Request for Fee Waiver (Form I-912)].
  4. In conjunction with Form I-485, the child should also file an Employment Authorization Application (Form I-765), commonly known as working papers, regardless of the child's age.
  5. After filing for residency, the child will receive a notice that he or she must appear to be fingerprinted and photographed at a USCIS office. The child should bring a valid form of identification, such as a passport.
  6. When it has been determined that the child meets the eligibility requirements for SIJS, he/she will receive a notice for an "adjustment of status interview" to be conducted at a district immigration office. The child's immigration attorney should accompany the child to the interview. The District Adjustment Officer will conduct the interview, asking for any clarification of documentation and updates such as the child's participation in school or part-time job, and a notarized letter proving that the child is currently in foster care.
  7. Finally, the child will receive a Notice of Decision from the USCIS. If the SIJS application is granted, the child will receive a green card in the mail within several months. The child is also now eligible to apply for Medicaid through SIJS, as coverage through foster care placement will cease once the child leaves care.

For more information, see OCFS Policy Directive, "Special Immigrant Juvenile Status (SIJS)" ([11-OCFS-ADM-01](#)). Questions regarding SIJS eligibility and application process should be directed to the appropriate OCFS Regional Office.

## C. Re-homing of children

Re-homing is a “non-temporary placement or re-placement of a child, usually adopted, with informal caregivers who are not related to the child or the parents through blood, marriage, or adoption.”<sup>1</sup> Adopted or birth children can be re-homed; however, most identified re-homing cases have involved children from international adoptions.<sup>2</sup>

Re-homing situations are usually a result of adoptive families being unable or unwilling to meet the complex emotional and behavioral needs of the children they have adopted. Some adoptive families report they turned to online forums to advertise and facilitate the placement of the children after unsuccessfully reaching out for assistance.<sup>3</sup> A child potentially can be re-homed to multiple placements and across state lines.

Re-homing placements are made through informal means, without the involvement of the court or social services agencies, and without background checks or home studies. The parent or guardian usually knows little or nothing about the replacement caregiver. Re-homing may be arranged by third parties, or, most often, through online connections such as Facebook or chat rooms. In some cases, a child may be re-homed multiple times.

### 1. Legality of re-homing

The re-homing arrangement is sometimes made by the parent or guardian giving power of attorney to the replacement caregiver avoiding formal involvement with the courts or the Department of Social Services. Typically, the power of attorney document delegates temporary responsibility for decisions related to health and education. Time limits and scope vary by jurisdiction, but a delegation of responsibility through power of attorney is not intended to substitute for long-term parental care.<sup>4</sup>

A power of attorney document does not remove the birth (where the child was not freed for adoption) or adoptive parent’s legal and moral responsibility to protect and care for the child.<sup>5</sup> Even if the parents have the best of intentions, they remain legally responsible for the child and have potential liability for any harm that may come to the child as a result of the re-homing arrangement.

The re-homing of a child to another state also raises issues concerning compliance with the Interstate Compact for the Placement of Children (ICPC) [[SSL §374-a](#)] and state laws regarding who may place out a child [[SSL §374\(2\)](#)] For more information on the ICPC, see [Chapter 14](#) of this guide.

<sup>1</sup> OCFS. (2015). *Re-Homing: What Do Parents Need to Know About “Re-Homing?”* [OCFS Pub-5167](#)

<sup>2</sup> Ibid.

<sup>3</sup> OCFS. “Re-homing of children” ([15-OCFS-INF-01](#))

<sup>4</sup> U.S. Department of Health and Human Services, Administration for Children and Families. (2014). *Re-homing of adopted children: responsibilities for states and opportunities in the provision of post-adoption services*. ACYF-CB-IM-14-02

<sup>5</sup> Ibid.

## 2. Indications of re-homing

A caseworker may become aware of the re-homing of a child through a CPS investigation or through casework contacts with a certified or approved foster home. Foster care caseworkers should assess the legal relationships between the caretakers and all children in the home and also be aware of potential signs that a child has been re-homed, such as:<sup>6</sup>

- The family can provide a power of attorney document but cannot produce a court order or other legal documentation regarding the adoption, custody, or guardianship of the child.
- The family discloses that they obtained the child from an online group.
- The child is not attending school.
- The family is not seeking medical treatment for the child because they lack appropriate legal documentation for the child.
- The child has a history of living with multiple families or has been adopted several times.
- The child thinks he/she is adopted, but the family's CPS history would have precluded them from becoming a certified adoptive home.
- The child is not sure about how he/she came to live with the current family.
- The child has had multiple moves, including moves across state lines.

## 3. Safety and risk in re-homing

Children that have been re-homed are extremely vulnerable to abuse and neglect, exploitation, or sex and labor trafficking due to the lack of criminal history background checks, SCR clearances, and home studies that occur in the course of a legal adoption. Individuals who advertise their availability to care for children through re-homing arrangements may have been unable to foster or adopt due to a criminal history or history of child abuse/neglect.

## 4. Actions to take if re-homing is suspected

If a caseworker becomes aware of or suspects that a child has been re-homed, the caseworker should contact the appropriate OCFS Regional Office with the facts and circumstances of the case, as well as any information on any third-party facilitators involved. OCFS will provide technical assistance to LDSSs and VAs with cases where re-homing is suspected to have occurred.<sup>7</sup> In addition, if the caseworker has reasonable cause to believe that the abuse or maltreatment of a child has occurred as a result of the re-homing placement, the caseworker must make a report to the SCR [[SSL §413](#)].

<sup>6</sup> OCFS. (2015). "Re-homing of children" ([15-OCFS-INF-01](#))

<sup>7</sup> Ibid.

If a re-homing situation has been identified, it may not be necessary to immediately remove a child from a re-homing situation. As with other cases, caseworkers must assess the home to identify and address any safety concerns [18 NYCRR 432.2(b)(3)]. A child may be able to remain safely in the replacement caregiver’s home until the situation has been appropriately addressed.

## 5. Resources for families considering re-homing

Caseworkers should be knowledgeable about re-homing so they can provide information about the dangers of re-homing to prospective and current adoptive families. Families should be encouraged to adopt children through formal channels and to seek preventive and/or post-adoption services to address identified needs of the child. Adoptive families should be reminded that asking for help is a sign of strength, not weakness.<sup>8</sup>

### **a. Preventive services**

Preventive services may be provided to eligible families to prevent a child from being placed in foster care [18 NYCRR 430.9(c)(5)]. For more information on preventive services, refer to the [OCFS Preventive Services Practice Guidance Manual](#).

### **b. Post-adoption services**

Adoptive families may consider re-homing because they feel they are unable to meet the complex emotional and behavioral needs of an adopted child. Caseworkers should inform families that they are entitled to post-adoption services from the LDSS from which the child was adopted [18 NYCRR 421.8(h)(2)]. Post-adoption services may include [18 NYCRR 421.8(h)(2)(ii)]:

- Counseling
- Training on how to care for children with special needs
- Clinical and consultative services
- Coordinating access to community supportive services

Post-adoption services may be provided for three years from the date of the adoption decree.

### **c. Regional Permanency Resource Centers**

Regional Permanency Resource Centers serve post-adoptive families and post-guardianship families, and work to:

- Prevent post-adoptive and post-guardianship dissolutions/disruptions
- Provide assistance to families so that children may be cared for in their own homes with their adoptive parent(s) or legal guardian(s)
- Strengthen post-adoptive and post-guardianship families
- Avoid foster care or other out-of-home placements.

<sup>8</sup> OCFS. (2015). *Re-Homing: What Do Parents Need to Know About Re-Homing?* ([Pub-5167](#) and [Pub-5167S](#))

A list of regional centers is provided on the OCFS post-adoption services web page at [http://ocfs.ny.gov/adopt/post\\_adoption/](http://ocfs.ny.gov/adopt/post_adoption/).

# Appendices

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## Online Resources

The text of New York State laws, including Social Services Law and the Family Court Act, can be found at:

<http://public.leginfo.state.ny.us/navigate.cgi>

Click on “Laws.” Then click on “SOS” for Social Services Law (SSL) or “FCT” for the Family Court Act (FCA).

The text of New York State Codes, Rules and Regulations can be accessed at:

<http://www.dos.ny.gov/info/nycrr.html>

Click on “View the unofficial NYCRR.” Regulations associated with child welfare are in Title 18, Chapter II, Subchapter C.

Access to child protective services forms used by the New York State Office of Court Administration can be found at:

<http://www.nycourts.gov/forms/familycourt/childprotective.shtml>

OCFS policy directives, including Administrative Directives (ADM), Information Letters (INF) and Local Commissioners Memorandums (LCM) are organized by year at:

<https://ocfs.ny.gov/main/policies/external/>

## References and links

In this guide, references to laws and regulations are **highlighted** but do not have links. Use the links above to locate the exact text.

Links are underlined and will connect you to policy directives and other online sources of information.

**Links** will navigate you to chapters, sections, and appendices within this practice guide.

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## Appendix 1-A: State Laws and Regulations Related to Foster Care

New York State has enacted laws and regulations to guide and regulate the delivery of foster care placement and services. Most of the legal requirements for the provision of foster care and adoption services in New York State are found in Article 6, Title 1 of the Social Services Law (SSL). Provisions of this law and other relevant statutes are cited throughout this Guide.

Regulations for implementing these laws are found in New York State Codes, Rules, and Regulations (NYCRR), Title 18, Chapter 2, Subchapter C. Some of the significant state laws and regulations related to foster care are discussed below.

### **Certification, approval, and supervision of foster homes**

Social Services Law §374 authorizes LDSSs and VAs, with the approval of OCFS, to “place out and board out” children who must be removed from their homes. The term “place out” means to place a child for adoption, and the term “board out” means to place a child in a family (foster) home to whom payment is made [SSL §§371(12) & (14)]. The rules and regulations for certifying, approving, and supervising foster family boarding homes, commonly known as foster homes, are found in 18 NYCRR Part 443.

### **Families in Transition Act**

The Families in Transition Act [SSL §384-a(2)(h)] was enacted in 2000 and allows parents to enter into a voluntary placement agreement with an LDSS when they are terminally ill or suffering from a progressively chronic disease and can no longer properly care for their children. If a relative or close friend is identified as a permanency resource by the parent, and the relative or friend agrees to assume responsibility for the child, the LDSS must assist that relative or friend in becoming a certified foster parent.<sup>1</sup>

### **Legal status of relatives caring for children**

Two laws enacted in 2008 clarified the roles of legal guardians and custodians of children who have been removed from their homes. Chapter 404 of the Laws of 2008 amended the Family Court Act to create the legal status of “permanent guardianship” for a relative or family friend who is caring for a child who has been freed for adoption or orphaned. The permanent guardian has the right to make decisions on behalf of the child without having to adopt him/her. Chapter 519 of the Laws of 2008 amended the Family Court Act to allow the Family Court to place a child directly with relatives or other suitable persons, with appropriate supervision. The relative can also apply for guardianship or custody of the child while an Article 10 proceeding is pending.<sup>2</sup>

### **Restoration of parental rights**

Chapter 343 of the Laws of 2010 amended the Family Court Act (FCA) and Social Services Law (SSL) by authorizing the Family Court, in narrowly defined circumstances, to restore a birth

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<sup>1</sup> OCFS. “The Families in Transition Act of 2001” ([01-OCFS-INF-02](#)).

<sup>2</sup> OCFS. “New Statutes Affecting Kinship Care: Chapters 404 and 519 of the Laws of 2008” ([09-OCFS-ADM-05](#))

parent's parental rights after they have been terminated. A petition for restoration of parental rights may be filed when:

- The child is 14 years of age or older
- At least two years have elapsed since the issuance of the order transferring guardianship and custody of the child
- The original adjudication terminating parental rights was not based upon severe or repeated child abuse; and
- The child is under the jurisdiction of the Family Court, has not been adopted, and has a permanency goal other than adoption.<sup>3</sup> [[FCA §§635-637](#)]

### **Re-entry into foster care**

Article 10-B of the FCA [FCA §1091] permits former foster youth between the ages of 18 and 21 to re-enter foster care under certain circumstances. It requires the LDSS to inform a youth transitioning out of care about his/her right to re-enter care. The LDSS or the former foster care youth may make a motion to the Family Court for the youth to re-enter care. The LDSS or youth petitioning the court must prove that no reasonable alternative to foster care exists. The youth must consent to enrollment in and attendance at an appropriate or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate in the particular case. Finally, the court must find that re-entry is in the best interests of the former foster youth.<sup>4</sup>

### **Kinship Guardianship Assistance Program (KinGAP)**

Chapter 58 of the Laws of 2010 was enacted to allow New York to establish a federally funded Kinship Guardianship Assistance Program (KinGAP). The law, which was codified as Title 10 of Article 6 of the Social Services Law, makes it possible for relatives of foster children in their care and based on 2017 amendments, certain non-relatives to apply for an ongoing financial subsidy. To receive this subsidy, the prospective relative guardian must comply with specified eligibility standards, including, but not limited to, that the prospective relative guardian must be a fully certified or fully approved foster parent who has cared for the child for at least six months. The child's permanency goal cannot be return to home or adoption.<sup>5</sup> [[SSL §§458-a-458-f](#); [18 NYCRR Part 436](#)]

### **Rights of incarcerated/inpatient parents**

Social Services Law §384-b(3)(l) allows LDSSs **not** to file a petition for termination of parental rights (TPR) when the parent is either incarcerated or in a residential substance abuse treatment program. In most cases, an LDSS is required to file a TPR if the child has been in foster care for 15 of the past 22 months unless there is a compelling reason or some other recognized exception not to do so, as defined in law and regulation. The LDSS must assess whether the incarcerated or confined parent has maintained a meaningful role in the child's life and, if so, whether the continued involvement of the parent is in the best interests of the child. If

<sup>3</sup> OCFS. "Restoration of Parental Rights" ([11-OCFS-INF-02](#))

<sup>4</sup> OCFS. "Re-entry into Foster Care by Former Foster Care Youth between the Ages of 18 and 21" ([11-OCFS-ADM-02](#))

<sup>5</sup> OCFS. "Kinship Guardianship Assistance Program" ([11-OCFS-ADM-03](#))

this assessment determines that termination of parental rights is not in the child's best interests, the TPR does not have to be filed<sup>6</sup> [[18 NYCRR 431.9](#)].

### **Permanency hearing notification and participation of youth**

Family Court Act §§1089 and 1090-a require that children in foster care who are 10 years of age and older receive notice of and, if it is possible and the child is willing, to participate in his/her permanency hearings. The child may choose to participate in person, by telephone, or by other electronic means. Younger children also may participate at the discretion of the court.<sup>7</sup>

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<sup>6</sup> OCFS. "Incarcerated Parents and Parents in Residential Substance Abuse Treatment with Children in Foster Care: Termination of Parental Rights and Other Issues" ([11-OCFS-ADM-07](#))

<sup>7</sup> OCFS. "Permanency Hearing Notification and Participation Requirements" ([16-OCFS-ADM-08](#))

## Appendix 1-B: Federal Legislation Related to Foster Care

While states operate their own child welfare systems, they must comply with specific federal requirements and guidelines in order to be eligible for federal funding under certain programs. Federal legislation also prompts responses at the state level, including enactment of corresponding state legislation, development or revision of state agency policy and regulations, and/or implementation of new programs.

The Federal Government started providing limited funding for child welfare services with the enactment of the original Social Security Act in 1935 [PL 74-271]. In 1967, availability of limited federal funding of child welfare services was moved to Title IV-B of the Social Security Act. In 1961, legislation provided for foster care maintenance payments under the federal Aid to Dependent Children Program, Title IV-A of the Social Security Act. Both of these programs were amended by the Adoption Assistance and Child Welfare Act of 1980, which established Title IV-E of the Social Security Act as the federal funding mechanism for foster care and adoption assistance, leaving Title IV-B as a funding mechanism for preventive and protective costs. [P.L. 96-272]

The following is a summary of federal legislation that has had a significant impact on foster care in New York State:<sup>1</sup>

### **Indian Child Welfare Act (ICWA) of 1978**

Congress enacted this law in response to the concerns about the large number of Native American children being removed from their homes and placed in non-Native American foster homes [P.L. 95-608]. The goal of this act was to create standards for the placement of Native American children and to minimize the disruption of Native American families. The ICWA, among other things:

- Established special standards for the removal of Native American children from their homes notification of Indian tribes of involuntary removals
- Addresses transfer of cases to tribal courts
- Grants standing to Indian tribes in proceedings involving Indian children
- Established preferences for the placements of Native American children in foster/adoptive homes
- Elevated the standards of proof for terminating the parental rights of Native American parents beyond reasonable doubt and foster care placements (clear and convincing evidence)

### **Adoption Assistance and Child Welfare Act of 1980**

This act [P.L. 96-272] created an adoption assistance program and improved foster care assistance and child welfare services in general. This act established the importance of

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<sup>1</sup> For a more comprehensive list of federal legislation related to child welfare, visit the Child Welfare Information Gateway at [www.childwelfare.gov/pubs/otherpubs/majorfedlegis/](http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis/)

preventing placement and promoting speedy reunification as priorities in the child welfare system and:

- Required states to pay adoption assistance for eligible adoptees
- Created a statutory definition for a child with special needs
- Created a specified condition that states must make “reasonable efforts” to prevent the removal of a child from the home and return those that have been removed in a timely manner
- Established the requirement of placing the child in the “least restrictive setting” and close to the child’s home
- Required states to review a child’s permanency status every six months
- Required courts to determine a permanency goal for each child within 18 months of placement into care<sup>2</sup> *Note:* this timeframe was subsequently reduced to 12 months by ASFA.

#### **Multi-Ethnic Placement Act (MEPA) of 1994**

This law [P.L. 103-382] provided guidelines for the recruitment of foster parents, placement of children into foster care, and adoption of children based on the child’s race, color or national origin. Failure to comply with this legislation would be a violation of Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin. MEPA:

- Prohibited states and other agencies receiving federal funding from “delaying, denying or otherwise discriminating” when making a foster care or adoption placement decision on the basis of the child’s or parent’s race, color or national origin
- Prohibited states and other agencies receiving federal funding from denying anyone the opportunity to become a foster or adoptive parent on the basis of race, color or national origin
- Required states to develop a plan to recruit foster and adoptive parents that are racially and ethnically representative of the children involved in the child welfare system<sup>3</sup>

#### **Adoption and Safe Families Act of 1997 (ASFA)**

This law [P.L. 105-89] was enacted to promote permanency and/or adoption for the children placed in foster care. ASFA:

- Addressed children’s safety in terms of placement decisions, service planning, and criminal background checks for prospective foster and adoptive parents

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<sup>2</sup> OCFS. “Foster Care Goals Related to Foster Care and Adoption Assistance” ([82-OCFS-INF-27](#))

<sup>3</sup> OCFS. “Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996” ([15-OCFS-ADM-05](#))

- Required states to petition for the termination of a parent’s rights, including, but not limited to, if the child has been in foster care for at least 15 out of the most recent 22 months unless certain circumstances exist.
- Offered incentive funds and health coverage for adopted children with special needs
- Established outcome measures to monitor state performance
- Required that a permanency hearing be held no later than 12 months after the child enters foster care. *Note:* New York established shorter timeframes for certain categories of children in foster care.<sup>4</sup>

### **Foster Care Independence Act of 1999**

This act [P.L. 106-169] encouraged states to develop and fund programs to assist the children in foster care without a permanency resource in making a smoother transition to independence or adulthood. This legislation:

- Expanded funding for independent living programs
- Developed outcome measures related to independent living
- Allowed states to extend Medicaid covering to 18- to 21-year-olds who left foster care without a permanency resource
- Provided federal funds to pay for room and board of former youth in foster care up to age 21<sup>5</sup>

### **Promoting Safe and Stable Families Act of 2001**

Most notably, this law [P.L. 107-133] authorized the John H. Chafee Independence Program, which provides education and training payment vouchers for youth who will be aging out of care. The law:

- Added infant safe haven programs to family preservation services funded by the federal government
- Supplemented the list of allowable services with promoting healthy parental relationship related activities
- Created a National Youth in Transition Database and reporting requirements

### **Child and Family Services Improvement Act of 2006**

This act [P.L. 109-288] re-authorized the Promoting Safe and Stable Families Program and also advanced child welfare practice. This legislation:

- Earmarked funds dedicated to improving the quantity and quality of caseworker visits, with the intention of improving caseworker recruitment, training and retention

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<sup>4</sup> OCFS. “Adoption and Safe Families Act: Information on the Act’s Implementation Timeframes and Preliminary Guidance Concerning Its Termination Requirements” ([98-OCFS-INF-03](#))

<sup>5</sup> OCFS. “Foster Care Independence Act of 1999” ([00-OCFS-LCM-07](#))

- Required states to create a plan for monitoring caseworker visits
- Required specified foster care proceedings to include consultation with the child, when it is age and developmentally appropriate

### **Fostering Connections to Success and Increasing Adoptions Act of 2008**

The major focus of this law [P.L. 110-351] was to create mechanisms to connect with and supply support to relative caregivers, and to create incentives for adoption. The act:

- Allowed states to provide kinship guardian assistance payments and payments for non-recurring guardianship expenses (KinGAP) under Title IV-E and extended Medicaid to children receiving those payments
- Amended the Chafee Independence program and Education Training Voucher program to include youth in a kinship guardianship placement
- Required federally funded agencies to make “reasonable efforts” to place sibling groups in the same foster care placement, when appropriate
- Required that education stability be a part of case planning for children in foster care

### **Preventing Sex Trafficking and Strengthening Families Act of 2014**

This law [P.L. 113-183] covered several major concerns relating to children in foster care who had been victims of sex trafficking, and a “reasonable and prudent” parenting standard for foster parents. The act:

- Required states to develop plans for the prevention and support of victims of sex trafficking<sup>6</sup>
- Required the appropriate notification of relatives when a child is removed from his or her home and clarified the definition of a sibling<sup>7</sup>
- Required states to establish “reasonable and prudent” parenting standards for foster parents and other caregivers, with the goal of achieving “normalcy” for children in foster care<sup>8</sup>
- Mandates training of foster parents and facility staff in the reasonable and prudent parenting standard
- Increased the minimum age for a youth in foster care with a permanency goal of “another planned permanent living arrangement” (APPLA) to 16 years<sup>9</sup>

<sup>6</sup> OCFS. “Preventing Sex Trafficking and Strengthening Families Act” ([15-OCFS-INF-03](#))

<sup>7</sup> OCFS. “Definition of Siblings and Expansion of the Relative Notification Requirements” ([15-OCFS-ADM-01](#))

<sup>8</sup> OCFS. “Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard” ([15-OCFS-ADM-21](#))

<sup>9</sup> OCFS. “APPLA for Youth 16 Years of Age and Older” ([15-OCFS-ADM-19](#))

- Required documentation of the discussion between caseworker and youth regarding the decision to choose the permanency goal of APPLA, among other additional court considerations for youth with the permanency goal of APPLA
- Allowed children aged 14 and older the ability to participate in the development of their case plan<sup>10</sup>
- Provided youth aged 14 and older with annual credit checks to prevent fraud<sup>11</sup>
- Required that youth aged 18 and older be provided with certain documents upon leaving foster care, such as if the child is otherwise eligible to receive a birth certificate, Social Security card, health insurance and medical records, and a state ID.<sup>12</sup>

### **Family First Prevention Services Act (FFPSA)**

The FFPSA made significant changes to various sections of Titles IV-B and IV-E of the SSA. The legislation required that any official documentation necessary to prove that the child was previously in foster care be provided to any youth who has been in foster care for at least six months and is leaving foster care by reason of attaining the age of 18 or older.<sup>13</sup>

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<sup>10</sup> OCFS. “Case Planning for Youth in Foster Care 14 Years of Age or Older” ([15-OCFS-ADM-22](#))

<sup>11</sup> OCFS. “Required Annual Credit Checks for Youth and Young Adults in Foster Care 14 Years of Age and Older” ([15-OCFS-ADM-13](#))

<sup>12</sup> OCFS. “Transition Planning with Youth for a Successful Discharge” ([15-OCFS-ADM-20](#))

<sup>13</sup> OCFS. “Providing Foster Care Placement Verification to Youth 18 Years of Age or Older Exiting Foster Care” ([18-OCFS-ADM-16](#))

**Appendix 2-A**  
**Consent for Temporary Placement of Child in Foster Care**

I (We) reside at \_\_\_\_\_.

I (We) am (are) the \_\_\_\_\_ of the following named child (children).

NAME	BIRTHDATE
_____	_____
_____	_____
_____	_____
_____	_____

I (We) hereby consent to the temporary placement of my (our) child (children) with the Commissioner of Social Service of \_\_\_\_\_ County.

I understand that this placement is pursuant to Family Court Act § 1021 and I have been informed that, in the event I do not consent to the placement of my child (children), Child Protective Services will apply to the \_\_\_\_\_ County Family Court for a temporary removal order pursuant to Family Court Act §1022. I realize that if the application was granted, it would provide for the temporary placement of my child(ren).

I (We) understand that a Child Protection Petition will be filed forthwith in \_\_\_\_\_ County Family Court on behalf of the above named child (children) and that I (we) will be given notice of the date, time and place of the hearing.

\_\_\_\_\_  
 Signature of Parent(s) or Guardian

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**Appendix 2-B**  
**Model Family Court Act Section 1023 Letter**

Dear: \_\_\_\_\_

Re: \_\_\_\_\_

NYS Case #: \_\_\_\_\_

Report ID#: \_\_\_\_\_

Report Date: \_\_\_\_\_

This is to inform you that we intend to apply to the Family Court of the State of New York, County of \_\_\_\_\_, for an order of temporary removal [or for a temporary order of protection] [or an order for the provision of the following service, services or assistance:] The court is located at \_\_\_\_\_.

You have a right to be present in court when the application is made and to be heard on the application. You have the right to be represented by a lawyer and, if you can't afford a private lawyer, you have the right to ask the court to assign a lawyer.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

### Appendix 3-A Anatomy of a Permanency Hearing Order

Following a permanency hearing, the Family Court judge will issue one of the following orders of disposition:

1. That the placement of the child be terminated and the child be returned to the parent or other person legally responsible for the child's care with such further orders as the court deems appropriate, or
2. That the child not be returned to the parent or other person legally responsible for the child's care

If the placement of the child is not terminated, the judge must determine whether the permanency goal for the child should be approved or modified, and the anticipated date for achieving the goal. The order should also indicate:

- Whether the child should be placed in the custody of a fit and willing relative, or the current placement should be continued until the completion of the next permanency hearing
- Whether reasonable efforts have been made to eliminate the need for placement of the child and to enable the child to safely return home, unless the child has been freed for adoption or there has been a determination by a court that such efforts are not required [FCA §1039-b]
- Where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, whether reasonable efforts have been made to make and finalize such alternate permanent placement
- When return home of the child is not likely, what efforts should be made to assess or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements
- The steps that must be taken by the LDSS or VA to implement the educational and vocational program components of the permanency hearing report and any modifications that should be made to the plan
- The date certain for the next scheduled permanency hearing [FCA §1089(d)(2)(i) through (vi)]

When the placement of the child is extended, the order shall also include:

- A description of the visitation plan or plans
- When the child is not freed for adoption, a direction that the child's parent or parents, including any non-respondent parent or other person legally responsible for the child's care, must be notified of the planning conference or conferences to be held and of their right to attend and to have counsel or another representative with them at such conference(s)

- When the child is not freed for adoption, a direction that the parent or other person legally responsible for the child's care keep the LDSS or VA apprised of his or her current whereabouts and a current mailing address
- When the child is not freed for adoption, a notice that if the child remains in foster care for 15 of the most recent 22 months, the LDSS or VA may be required by law to file a petition to terminate parental rights
- When a child has been freed for adoption and is over age 14 and has voluntarily withheld his or her consent to an adoption, the facts and circumstances with regard to the child's decision to withhold consent and the reasons for it
- When a child has been placed outside of the state, whether the out-of-state placement continues to be appropriate, necessary, and in the best interests of the child
- When a child has reached the age of 14, or will reach the age of 14 before the next permanency hearing, the services and assistance necessary to assist the child in learning independent living skills to assist the child in making the transition from foster care to successful adulthood
- If the child has reached or will reach the age of 14 before the next permanency hearing, a notice that any revisions or additions to the permanency plan shall be developed in consultation with the child and, at the option of the child, with up to two members of the child's permanency planning team who are selected by the child. These individuals cannot be the foster parent, caseworker, case planner, or case manager for the child. The LDSS commissioner with custody of the child may reject an individual selected by the child if the commissioner has good cause to believe that the individual would not act in the best interests of the child. One of the individuals selected by the child may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child [FCA §1089(d)(2)(vii)]

The court may issue other findings or orders that it deems to be appropriate, such as services necessary for achieving the permanency plan.

If the child has been freed for adoption, the court may:

- Direct that the child to be placed for adoption with the foster family where he/she resides or has resided, or any other suitable person(s)
- Direct the LDSS to provide services or assistance available pursuant to the LDSS comprehensive annual services program plan to the child and the prospective adoptive parent, including an evaluation of eligibility for an adoption subsidy
- Recommend that OCFS investigate the facts and circumstances concerning the discharge of responsibilities for the care of the child
- Recommend that the attorney for the child, the LDSS, or VA file a petition to restore the parental rights of the child

## Appendix 7-A

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**CLEARANCE CHART FOR CERTIFIED OR APPROVED FOSTER HOMES**

Stage	Population	Criminal History Records (DCJS and FBI) <sup>1</sup>	Statewide Central Register (SCR) <sup>2</sup>	Staff Exclusion List (SEL)
Initial application for certification or approval and Re-openings of certified or approved foster homes <sup>3</sup>	Prospective Foster Parent(s)	Yes	Yes	Yes
	Persons 18 years of age or older residing in the home of the prospective foster parent(s) <i>(*includes persons in foster care 18 years of age or older)</i>	Yes	Yes	Yes
Annual renewal of certification or approval <sup>4</sup>	Foster Parent(s) <sup>5</sup>	No	No	No
	Persons 18 years of age or older who reside in the home of the certified or approved foster parent(s) <i>(*includes persons in foster care 18 years of age or older)</i>	Required if: <ul style="list-style-type: none"> <li>• a person residing in the foster home turns age 18 after the preceding certification or approval; or a person 18 years of age or older comes to reside in the foster home after the preceding certification or approval; and</li> <li>• the person did not have a DCJS and FBI criminal history check completed previously</li> </ul>	No	No
Any time after the certification or approval of the original foster parent <sup>6</sup>	Adult spouse who enters the home and applies for certification or approval as a certified or approved foster parent	Yes	Yes	Yes

Pub-51838 (10/2017)

<sup>1</sup> See 16-OCFS-ADM-20.

<sup>2</sup> SCR check includes NYS SCR check and out of state SCR checks of persons who resided in another state within 5 years of the initial application or application for reopening.

<sup>3</sup> 18 NYCRR 443.7.

<sup>4</sup> 18 NYCRR 443.10.

<sup>5</sup> 18 NYCRR 443.10.

<sup>6</sup> 18 NYCRR 443.10(c).

## Appendix 7-B

# Youth Voice Questions

**Child's Name:**

**Case Planner/Case worker:**

**Date:**

Each year, as part of the casework contacts, the child's case planner or the child's caseworker must give youth between 14 and 21 years of age the opportunity to participate in the evaluation of his or her foster home by responding to the questions below. The Youth Voice Questions are intended to be used by a worker to guide a youth in discussions about the youth's perspective related to his or her safety and quality of life in their foster home. Workers must not change the intent of the questions but are encouraged to ask the questions in their own words. A worker may need to simplify or clarify questions to assist youth in providing feedback. A worker may discuss the questions with a youth over a period of time or during a single casework contact with the youth.

1. How are you getting along with everyone in the foster home? (Prompt with names of individuals, if applicable.)
2. Do you feel welcome in your current foster home? If not, please explain why.
3. What do your foster parents do to make you feel comfortable and safe? Is there a way to improve your comfort?
4. Do you feel that you can talk to your foster parents and ask them things? Do you feel that they listen to you? Please explain.
5. What do you like about living in your current foster home? Is there anything that you dislike?
6. Do you have everything you need? What do you need that you do not have? Is there anything I (the interviewer) can help you with? (Define need- such as emotional, physical etc.)
7. Do you feel like you are treated like other youth your age or have the same rules as youth your age? Please explain.
8. How do your foster parents support visits and/or contact with your birth family, brothers, sisters, etc.?

- 
9. How do your foster parents support your social life and time with your friends?
  10. Do you feel your foster parents are supportive and/or involved in your goals and activities regarding:
    - Your Permanency Plan
    - After-school, community activities, etc.
    - Service Plan Reviews, meetings, court, etc.
  11. Is there anything you would like your foster parents to do to help you succeed? If yes, please explain.
  12. How do your foster parents assist you in preparing for your future? In what ways?
  13. Is there anything in general you would like to change or improve in your foster home? If yes, please explain what it is that you would like to change or be improved.
  14. Would you recommend this family to other youth in foster care who are between 14 and 21 years of age? If no, please explain the reasons for not recommending this family.
  15. How do you feel now that you have participated in the annual evaluation process of your foster home?
  16. Is there anything you would like to share that I have not asked or anything you would like to talk about or add?

## Appendix 7-C

### Applying the Prudent Parent Standard

Recognizing the need to individualize the response to a child's engagement in normative experiences, an LDSS, VA, and caregiver should consider the following before making a decision:<sup>1</sup>

#### **a. Age of the child**

The developmental and well-being needs of a young child, school-aged child, adolescent and young adult are different from each other. When applying the standard, the unique needs of the chronological and developmental age should be part of the decision-making process. For instance, allowing a child to stay overnight at a friend's home will vary depending on the child's age and developmental capacity.

**0-5 years:** The early experiences of a child impact his/her lifelong health and learning. Research indicates that for young children to meet their full potential, they need a safe, stable home that promotes their cognitive and emotional development. This includes bonding with a responsive and nurturing caregiver and having access to skill building opportunities so that the child can learn how to cope with adversity, adapt to his/her surroundings, and regulate his/her emotions. In applying the standard, caregivers are able to support a child's healthy development by supporting a bond between a nurturing adult and the child. This includes, but is not limited to, where applicable, encouraging the birth/adoptive parent to talk and play with the child; and espousing shared parenting by providing birth/adoptive parents, where applicable, with the opportunity to make decisions for their child(ren), such as hair styles and haircuts, while the child is in foster care. Additionally, the caregiver can identify and participate in skill building opportunities with the child, including but not limited to play dates, play time at home and in the park, reading books, and talking and singing with the child.

**6-12 years:** During this developmental timeframe, school-aged children are reinforcing their sense of self by talking about their feelings, showing pride in accomplishments, striving for independence, developing and testing personal values and beliefs, learning to distinguish between reality and fantasy, and other age-appropriate behavior, for example, being able to dress/undress him/herself, exploring new and different activities, having a favorite sport, hobby or activity, and focusing on setting goals. Additionally, children of this age are exploring connections with peers and other adults, such as coaches and teachers, to further build knowledge, skills and beliefs/mindsets. In applying the standard, a caregiver may identify and enroll the child in activities that the child has expressed a desire to participate in or introduce the child to new activities; listen to and offer support and guidance when the child is trying to understand difficult feelings; establish and enforce reasonable limits (be warm but firm); and support bonding, where applicable, between the child and his/her birth/adoptive parent, guardian or prior caretaker. Additionally, as part of the standard, where applicable, the birth/adoptive parent, guardian or prior caretaker should be engaged in the decision-making as it pertains to the child's participation in activities and opportunities.

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<sup>1</sup> OCFS. "Supporting Normative Experiences for Children, Youth, and Young Adults in Foster Care: Applying a Reasonable and Prudent Parent Standard" ([15-OCFS-ADM-21](#))

**13-17 years:** Adolescence is a challenging developmental time period for all youth; for a child in foster care, it is especially difficult as the child is trying to balance the phases of adolescence and the transition into young adulthood with attaining a safe and permanent home that supports the difficult and oftentimes bumpy journey through the teenage years. During this phase, youth are eager to think and act independently, learn their interests and talents, experiment and take risks, and practice independent decision-making

Connections with peers have a significant role during this developmental phase, as a youth tries to understand him/herself in relation to the surrounding world. A caregiver's application of the standard includes efforts to support the youth in applying logic, reasoning and observation to solve problems and make decisions, and to cultivate independent living skills, regardless of the youth's permanency goal, by modeling positive adult behaviors (e.g., responsibly managing money and credit); actively engaging the youth in conversations that identify his/her interests, goals, and steps to achieve goals; encouraging and permitting participation in school and other social activities; allowing for a youth to safely take age and developmentally appropriate risks (e.g., driving a car, taking public transportation alone, running for student council); supporting developmental milestones (e.g., a youth's participation in a driver's education course and obtaining a driver's license, finding a part-time job); and assisting the youth to learn more about adolescent development (e.g., physical and emotional changes that occur during puberty) and healthy sexual identity and behavior, including responsibilities, choices, and consequences.

**18-21 years:** Efforts to implement the standard with young adults in foster care will need to be applied differently, as these young people are legally adults and have the ability to exit foster care based on their own decision at any time. In such circumstances, the young adult should be supported to make decisions and hone his/her independent, critical thinking skills as part of preparation for a successful adulthood. This includes, but is not limited to, providing a safe space for the young adult to try new things and learn from successes and failures; supporting the young adult in advocating for him/herself; providing help when needed; supporting the youth in long-term planning; and assisting the young adult in thinking about and being accountable for one's actions and the consequences of those actions.

### ***b. Children in foster boarding homes***

Foster boarding homes are intended to be less restrictive than congregate care and allow for more opportunities to engage in normative experiences. OCFS regulations have long required that foster parents enable children in foster care to mingle freely and on an equal footing with other children in the household and in the community, and to be accepted as members of the household and share in the pleasures and responsibilities of the household [18 NYCRR 443.3(b)(1)].

To promote and increase a child's participation in age and developmentally appropriate activities and opportunities, foster parents must apply the standard [18 NYCRR 441.25(b)]. This includes the empowerment of foster parents to make day-to-day decisions to allow for a child to participate in experiences that will contribute toward the development of critical life skills, such as the ability to consider benefits and risks and make a decision based on such assessments, self-regulation, healthy coping, and the ability to have healthy relationships.

When applying the standard to the consideration of the activities and opportunities in which the child may participate, the foster parent should, where appropriate, engage the child's birth/adoptive parent, guardian or prior caretaker, and child (if age and developmentally appropriate) in decision-making. The input and position of the birth/adoptive parent, guardian or prior caretaker, if it is appropriate to engage them, should be considered in the decision-making process. However, if the foster parent, case worker/manager, and child (if age and developmentally appropriate) determine that an alternative decision is appropriate and in the best interests of the child, then the foster parent and child may move forward with that alternative decision. The case worker/manager must document the determination and the basis for such determination in the child's case record. It is recommended that the foster parent also record this in the notebook maintained for that child.

### ***c. Children in congregate care***

The experiences of children in congregate care [institution, group residence, group home, agency boarding home, or SILP] differ from those who reside in foster boarding homes. Opportunities to participate in normative experiences may be more restricted, based on the needs and functional capacity of the child.

Congregate care providers must designate at least one employee on-site in each facility to apply the standard [18 NYCRR 441.25(c)]. This person must be trained on how to use and apply the standard in the same manner as a prospective foster parent. In order to fully implement the standard, it is recommended that LDSSs and VAs assign at least one employee per shift in each facility to serve in this capacity. This will allow for a child to have access to an adult who is empowered to apply the standard regardless of the time or day of the week. LDSSs and VAs should explore opportunities in which the child can participate both within and outside of the congregate care setting that will support the child in the development and honing of critical life skills. Such opportunities may include, but are not limited to, the child's participation on sports teams and in other extracurricular activities outside of the congregate care setting; providing and supporting peer-to-peer mentorship; volunteering in the community; and working a part-time job.

In addition, as part of applying the standard, congregate care staff should engage, to the extent possible and as appropriate, the child's birth/adoptive parent, guardian or prior caretaker as well as the child (if age and developmentally appropriate) in decision-making. The input and position of the birth/adoptive parent, guardian or prior caretaker, where this is appropriate, should be considered in the decision-making process. However, if the case worker/manager, and child (if age appropriate) determine that an alternative decision is appropriate and in the best interests of the child, then the caregiver and child may move forward with that alternative decision. The case worker/manager must document the determination and the basis for such determination in the child's case record.

### ***d. Children with developmental and/or physical disabilities***

The child's developmental and physical capacities play a role in determining the activities and opportunities in which the child may participate. It is imperative that the caregiver understand such cognitive and/or physical abilities prior to agreeing on the child's participation in normative experiences.

In applying the standard, the caregiver should, where appropriate, engage the child's birth/adoptive parent, guardian or prior caretaker speak with the child's health care provider(s), teachers and other adults as appropriate, and observe and interact with the child to learn about and understand the child's developmental and/or physical capacity. Once this is understood, the caregiver may identify activities and opportunities to support the optimal development of the child that are developmentally and/or physically appropriate.

The child's developmental and/or physical disabilities should not serve as a barrier to participation in appropriate activities and opportunities that develop the critical life skills necessary for the child to thrive.

#### ***e. Children with a behavioral diagnosis***

In order to apply the standard, a caregiver must be aware of a child's behavioral diagnosis and adjust a child's participation in activities and opportunities accordingly. It is recommended that the caregiver work closely and communicate regularly with the child's mental health provider to better understand the child's mental health diagnosis and to address the child's mental health needs.

The caregiver should seek guidance and feedback from the mental health provider and others who serve as supports or resources to the child to identify and select coordinated services, activities, and opportunities that will assist the child in learning how to manage his/her behavioral diagnosis. The caregiver should, where appropriate, engage the child's birth/adoptive parent, guardian or prior caretaker, and child (if age and developmentally appropriate) when considering the various activities or opportunities in which the child may participate.

#### ***f. Children with substance use disorder***

As part of knowing the child and being able to effectively apply the standard, a caregiver must be aware if the child is using or abusing alcohol and/or substances and respond accordingly. The caregiver should discuss the situation with the case worker, case planner or case manager regarding treatment services (inpatient or outpatient, as appropriate) and supports to help the child to stop consuming alcohol and/or other substances.

The caregiver should work with an addiction treatment professional to identify activities and opportunities that safely support the healthy development of the child. In supporting the child, the caregiver should, where appropriate, also be engaging the child's birth/adoptive parent, guardian, or prior caretaker, and the child (if age and developmentally appropriate) when considering treatment options, activities, or opportunities.

#### ***g. Youth who are expecting or parenting***

Supporting expectant mothers and young parents in foster care is pivotal to reducing the risk that the young parent's child will enter the foster care system. In applying the standard, the caregiver can provide the support necessary to keep the young parent enrolled in school and prevent him or her from falling behind due to absences related to childbirth and parenting.

The caregiver should talk to the young person about educational programs and opportunities that provide child care services and assist the young parent in safely caring for the baby. By doing this, the caregiver will not only model positive parenting behavior but also educate the

young parent(s) on the importance of co-parenting, healthy and safe sexual activity, meeting the developmental needs of the baby.

Keep in mind that although this young person might be preparing for the birth of a child or might already be a parent, he or she still needs support. Efforts should be made, where appropriate, to engage the youth's birth/adoptive parent, guardian, or prior caretakers in decision-making.

#### ***h. Youth placed after adjudication as JDs or PINS***

Caregivers of foster children in residential programs operated by VAs and non-secure OCFS-operated residential programs with 25 or fewer beds must apply the standard. The caregiver must be aware of the behavioral and delinquent history of the child and set boundaries as appropriate when permitting a child to participate in normative experiences.

The child's behavioral or delinquent history should not prohibit the child from participating in activities and opportunities that support his/her developmental growth; however, the caregiver must consider the delicate balance between the child's responsibilities and privileges, the legal responsibility of the agency to supervise the child, and the safety of the community when determining whether or not to allow a child to participate in skill development activities. The caregiver should, where appropriate, engage the child's birth/adoptive parent, guardian, or prior caretaker and child (if age and developmentally appropriate) in identifying and making decisions pertaining to opportunities that are age and developmentally appropriate.

#### ***i. Children who have been victims of sex trafficking***

The standard should be applied to both prevent and respond to children in foster care who are at risk of becoming or are victims of sex trafficking. If a child discloses to the caregiver that he or she had been a victim of sex trafficking, foster parents must immediately report this to the child's case worker, case planner or case manager. See **Chapter 10** of this guide, "Assessing Safety of Children."

In applying the standard to these children, caregivers may seek out activities and opportunities that assist the child in building a positive sense of self; help the child to healthily cope with trauma and other adverse experiences; and, educate the child about the definition of sexual exploitation and its negative impact. If appropriate, the caregiver should engage the child's birth/adoptive parent, guardian or prior caretaker and child (if age and developmentally appropriate) in identifying opportunities that will advance the child's healthy development in a safe and permanent home.

#### ***j. Children who return after being missing from care***

If the child is absent from the foster boarding home or child care facility without the knowledge and/or consent of the caregiver, the absence without consent must be reported to law enforcement and to the National Center for Missing and Exploited Children by the applicable authorized agency within 24 hours after receiving notice of the absence [18 NYCRR 431.8]. See **Chapter 10** of this guide, "Assessing Safety of Children."

When the child returns, applying the standard would include, but not be limited to, such things as developing agreements with the child, if age and developmentally appropriate, that espouse communication, a balance between responsibilities and privileges, and the ability to participate in normative experiences, such as attending parties or working a part-time job.

The caregiver, where appropriate, should engage the child's birth/adoptive parent, guardian or prior caretaker in identifying opportunities and activities that will prevent and minimize the likelihood that the child will run away from care.

## Appendix 7-D

### Applying the Reasonable and Prudent Parent Standard: “Know” Before You Say “No”

#### Introduction

On September 29, 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (the Act) into law, which amended various provisions of Title IV-E of the Social Security Act. One of the primary purposes of the Act is to improve the safety, permanency, and well-being outcomes of children, youth and young adults<sup>1</sup> involved with the child welfare system. Section 111 of the Act, *Supporting Normalcy for Children in Foster Care*, seeks to advance the well-being of children, youth and young adults by requiring states to support normative experiences for children through the implementation of the reasonable and prudent parent standard (the standard). The standard allows for a caregiver<sup>2</sup> to make parental decisions that maintain the health, safety, and best interest of the child, as well as decisions about the child’s participation in extracurricular, enrichment, cultural and social activities that are age and developmentally appropriate, in a way that protects the child while allowing for normative experiences.<sup>3</sup>

New York State amended state statute and OCFS regulations to implement the Act. These amendments took effect on September 1, 2015.

“Know” Before You Say “No” is intended to answer frequently asked questions that may assist in applying the standard. Caseworkers, case planners, case managers, foster parents, and congregate care staff are encouraged to refer to this Q&A tool when considering a child’s participation in normative experiences.

For additional information pertaining to the application of the standard and population considerations, refer to OCFS regulation 18 NYCRR 441.25 and 15-OCFS-ADM-21.

#### Frequently Asked Questions and Answers

*If the birth/adoptive parent, guardian or prior caretaker disagrees with a decision, is that the ultimate decision as to whether a child can participate in a normative experience?*

Where appropriate, the input and position of the birth/adoptive parent, guardian or prior caretaker should be considered in the decision-making process. This input is dependent on the individual situation. In cases where parental rights have been surrendered or terminated or there are safety concerns or the parties are not available, such consultation or discussion

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<sup>1</sup> For the purpose of this document, children, youth, and young adults in foster care will be referred to as “child.”

<sup>2</sup> The Office of Children and Family regulation 18 NYCRR 441.25 defines “caregiver” as the foster parent with whom the child in foster care has been placed; or a designated employee of a child care facility, including the institution, group residence, group home, agency boarding home or supervised independent living program in which the child has been placed.

<sup>3</sup> Normative experiences are age and developmentally appropriate activities and opportunities that promote the healthy cognitive, social, emotional, physical, and educational development of children, youth, and young adults, regardless of their involvement in the child welfare system.

should not be a part of the decision-making process. However, if the caregiver, case worker, case planner, case manager, and child (if age and developmentally appropriate) determine that an alternative decision is appropriate and in the best interest of the child, then the caregiver and child may move forward with that alternative decision. The determination and the basis for such determination must be documented in the child's case record.

*If the child gets hurt while participating in an activity that a caregiver has approved, is a caregiver liable?*

In New York State, where a foster child is injured as a result of an activity carried out as part of the standard, the New York State common law standards for negligence, intentional wrongdoing and gross negligence, as evolved over the years in the case law of this state, would apply. There is no separate statutory liability standard applicable to caregivers on the subject.

However, the following guidance is offered on how a caregiver can take steps to limit potential exposure to liability and, even more importantly, to limit the potential for injury to a child in foster care.

- Inquire about and be familiar with OCFS policies that relate to the application of the reasonable and prudent parent standard;
- Follow the guidance provided by the applicable LDSS concerning the particular child;
- Participate in available trainings on the subject of reasonable and prudent parenting;
- If there is uncertainty regarding a particular issue concerning a child's activities, foster parents should consult with the child's case worker and facility staff should consult with appropriate supervisory staff on such decisions regarding the child;
- Be aware of the positions and wishes of the birth parents, guardians or prior caretakers, and consult with them as appropriate;
- Discuss the activity with the child and if the activity occurs, receive feedback from the child and monitor for changes in child's behavior, health or other functions;
- Record all communications relating to the consideration and application of the reasonable and prudent parent standard in relation to a particular child;
- Staff in congregate care facilities applying the standard should be familiar with the foster child's case record, including, but not limited to, relevant health, behavioral and clinical information;
- Be aware of medical reports or court orders that limit activities and apply the reasonable and prudent parent standard in a manner consistent with such report or order;

- For foster parents, receive and be familiar with placement information that must be provided to the foster parent regarding a foster child placed in the foster home as required by OCFS regulation.<sup>4</sup>
- Make sure that foster children receive medical checkups as prescribed by OCFS regulations and medical directives;
- Be aware of and comply with the child's school policies on athletic injuries.

Additionally, caregivers are encouraged to refer to 15-OCFS-ADM-21 for guidance on how a caregiver can take steps to limit potential exposure to liability and, even more importantly, limit the potential for injury to a child in foster care.

Additionally, caregivers, birth/adoptive parents, guardians or prior caretakers, case workers, case planner, case managers, and children (if age and developmentally appropriate) are encouraged to utilize all of the attachments included with 15-OCFS-ADM-21 for guidance on commonly asked questions and considerations that should be explored prior to making a decision.

*Is a congregate care staff person required to contact the Justice Center when a child is injured while participating in an approved activity?*

Depending on the severity of the injury, congregate care staff may be required to contact the Justice Center if a child is injured while participating in an approved activity.

*Is a caregiver allowed to sign permission slips for school activities (e.g., field trip, sports team)?*

The first consideration is to be aware of the policy of the school district as to who may sign the permission slip on behalf of the child. If the school district allows caregivers to sign, subject to the considerations referenced in the next paragraph, a caregiver may sign permission slips allowing a child to participate in school activities. For example, if the child is attending a school trip to a museum, the caregiver may move forward with signing the permission slip without seeking out the permission of the birth/adoptive parent, guardian or prior caretaker. If an activity involves travel outside of the county or state, the caregiver may grant permission but must notify the case worker, case planner, or case manager prior to the event occurring. If the school activity involves travel outside of the country, the local department of social services commissioner or designee must be notified prior to the event occurring and must consent.

The caregiver must apply the reasonable and prudent parent standard when determining participation in the activity, including but not limited to, assessing the potential risk for injury from the activity, ability to comply with the rules set forth by the schools as it pertains to medical restrictions, understand the child's physical and/or cognitive ability, and confirm that participation in such activity does not conflict with any mandatory court appearance, court ordered visitation, or violate the child's safety plan. Caregivers should refer to Attachment B: Applying the Reasonable and Prudent Parent Standard: Caregiver Considerations when

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<sup>4</sup> Office of Children and Family Services. *New York State Foster Parent Manual*, p.13.  
<http://ocfs.ny.gov/main/publications/Pub5011.pdf>

determining whether a child may participate in an activity. Additionally, if appropriate, the birth/adoptive parent, guardian or prior caretaker, and child (if age and developmentally appropriate), should be engaged prior to making a decision.

*Is a caregiver allowed to enroll and sign permission slips for participation in a sport or team activity (e.g., dance, cheerleading, drama club) outside of the school?*

The first consideration is who is authorized to enroll or sign permission slips as established by the organization that is operating or overseeing the sport or team activity. If allowed by the rules of the particular activity, a caregiver may enroll and sign permission slips for a child to participate in an activity outside of the school.

When determining whether to allow the child to participate in the activity, the caregiver must apply the reasonable and prudent parent standard when determining participation in the activity, including but not limited to, assessing the potential risk for injury from the activity, ability to comply with the rules set forth by the activity as it pertains to medical restrictions, understand the child's physical and/or cognitive ability, and confirm that participation in such activity does not conflict with any mandatory court appearance, court ordered visitation, or violate the child's safety plan. Additionally, the caregiver should, where appropriate, engage the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) in determining the child's participation in the activity. When making a decision, all should consider how participation in this activity will continue should the child is returned to the birth/adoptive parent, guardian or prior caretaker.

Caregivers should refer to 15-OCFS-ADM-21, Attachment B: *Applying the Reasonable and Prudent Parent Standard: Caregiver Considerations* when determining whether a child may participate in an activity.

*Is a caregiver allowed to permit a child to travel with their team for sports or other activities (e.g., dance, cheerleading, theatre)?*

Prior to consenting to such travel, the caregiver must apply the reasonable and prudent parent standard, including, where appropriate, engaging the birth/adoptive parent, guardian or relative caretaker and child (if age appropriate) in determining the child's participation in the activity. For travel outside of the county or state, the case worker, case planner, or case manager must be notified prior to the event occurring. If the activity involves travel outside of the country, the caregiver should confirm that such travel does not conflict with court orders and consider the child's medical needs and behavioral history. In addition, the local department of social services commissioner or designee must be notified prior to the event occurring and consent to such travel.

For travel outside of the country, caregivers should consider if the child has relatives in the country of travel as well as any potential risks pertaining to child abduction. Caregivers are encouraged to refer to the U.S. Department of State International Parent Child Abduction website for more information:

<http://travel.state.gov/content/childabduction/english/preventing/tips.html>

Any concerns regarding travel outside of the country should be discussed with the case worker, case planner, case manager and, as appropriate, the local department of social services commissioner or voluntary agency executive director.

*Is a child in foster care allowed to travel out of county, state, and/or country with a caregiver?*

The caregiver must apply the reasonable and prudent parent standard for travel out of county, state and/or country with the child. This includes, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) in determining the child's ability to travel. The caregiver should consider at minimum the length of time in which the child has been with the caregiver/family, the child's comfort in traveling with the caregiver/family, and if the travel will conflict with any mandatory court appearances and/or court ordered visitations. For travel outside of the county or state, the case worker, case planner, case manager must be notified prior to the event occurring. If the activity involves travel outside of the country, the caregiver should confirm that such travel does not conflict with court orders and consider the child's medical needs and behavioral history. In addition, the local department of social services commissioner or designee must be notified prior to the event occurring and consent to such travel.

For travel outside of the country, caregivers should consider if the child has relatives in the country of travel and any potential risks pertaining to child abduction. Caregivers are encouraged to refer to the U.S. Department of State International Parent Child Abduction website. Any concerns regarding travel outside of the country should be discussed with the case worker, case planner, case manager and, as appropriate, the local department of social services commissioner or voluntary agency executive director.

*How are the costs associated with various activities to be paid?*

The rate received by the foster boarding home or congregate care facility is expected to cover most of the expenses involved with the care of the child, including most routine activity expenses. Some unusual costs may be allowable as special payments subject to the approval of the applicable LDSS.<sup>5</sup> For these more expensive activities, foster parents should work with their LDSS.

*Are background checks/clearances necessary in order for a child to attend a party (e.g., birthday, graduation), visit with a friend, or stay overnight at a friend's house?*

Background checks/clearances are not legally necessary in order for the child to attend a party, visit with a friend, or stay overnight at a friend's house. SCR clearances under Social Services Law (SSL) §424-a and criminal history checks under SSL §378-a are not authorized for these individuals. In all instances, the caregiver must apply the reasonable and prudent parent standard.

For older children in foster care under the age of 18 who seek to attend a party unsupervised by the caregiver, the caregiver should consider the child's age and maturity to determine if this is developmentally appropriate, as well as the child's history with responsible behavior. Additional

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<sup>5</sup> 18 NYCRR 427.3

factors to consider include who will be in attendance at the party and where the party will be located. The caregiver should have the contact information of the adult supervising the party.

For visiting with a friend, the caregiver should consider the child's age and maturity, the child's history with responsible behavior, whether the caregiver has met the child's friend, knowledge about the friend (e.g., the friend's positive or negative behavior), contact information for the friend (e.g., home address, cell phone number), and the location in which the child will be visiting the friend.

For an overnight stay at a friend's house, the caregiver should consider the child's age and maturity, the child's history with responsible behavior; the child's mental health history, including any triggers that may endanger the child or others in the host household; meeting in-person with the parents or other responsible adults of the family with whom the child will be staying overnight; determining any other individuals who will be in the home during the overnight stay and ascertaining, to the extent possible, that they will not endanger the child's safety; sharing all emergency contact information with the host family; and, knowing where the child will be sleeping.

*Is a child in foster care allowed to access social media (e.g., Facebook, Twitter, Snapchat, Instagram)?*

There is no legal right to access to social media, but it may be allowed on a case by case basis as discussed below.

The caregiver must apply the reasonable and prudent parent standard, including engaging, where appropriate, the birth/adoptive parent, guardian or prior caretaker, and child (if age appropriate), in determining the child's access to social media. The caregiver should consider the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, the child's safety (e.g., whether the child is a victim of sex trafficking), if there is a court order or order of protection that limits who the child may interact with; monitoring the child's social media activity by limiting his or her use of social media to an open or public space, connecting with the child via the online platform, obtaining the child's user information (username and password) for his/her social media account(s); and teaching the child about safe Internet practices, such as not chatting or meeting with strangers and not sharing personal information online (e.g., Social Security number, address).

*Is a child in foster care allowed to have a cell phone?*

While there is no right of a child in foster care to a cell phone, there is also no prohibition against a foster child having one.

The caregiver must apply the reasonable and prudent parent standard in determining whether or not a child is allowed to have a cell phone, including, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate). The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, the child's safety (e.g., the child is a victim of sex trafficking), if the child travels a long distance to/from school, has a part time job, if there is a court order or order

of protection that limits who the child may interact with, access to social media via the cell phone, and monitoring text messages.

Regulatory standards relating to the use of telephones by children in foster care are set forth in OCFS regulation 18 NYCRR 441.18(b).

*Is a caregiver allowed to cut or style a child's hair or arrange for someone else to do so?*

A hair style may have cultural significance for the child and/or the child's birth/adoptive parent, guardian prior caretaker or family. Understanding this, a caregiver should not cut or style, or consent to the cutting or styling, of a child's hair without the engagement, if appropriate, of the birth/adoptive parent, guardian or prior caretaker, or familiarity with the cultural norms of the child and/or the child's family. At the time of removal or when completing the initial Family Assessment and Services Plan (FASP), the case worker, case planner, case manager should obtain from the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) information as to how the child's hair should be cut, styled, and maintained. If the child is older and requests that his/her hair be cut or styled differently, the caretaker must apply the reasonable and prudent parent standard, including engaging, if appropriate, the birth/adoptive parent, guardian or prior caretaker, and considering the age and maturity of the child, whether the request is developmentally appropriate, whether there is a medical reason (e.g., lice), and the child's desire for changing the cut/style of his/her hair.

*Can a caregiver determine the child's bedtime and curfew?*

A caregiver must apply the reasonable and prudent parent standard when determining a child's bedtime and curfew. This includes considering the child's age and maturity, the child's history of responsible behavior (e.g., history of curfew violations), the child's safety (e.g., the child is a victim of sex trafficking), and, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) when determining the bedtime and/or curfew for a child.

*Is a child in foster care allowed to stay with a babysitter?*

A child in foster care is allowed to stay with a babysitter for a limited time under certain conditions. OCFS regulation, 18 NYCRR 443.3(b)(3) states that foster parents will never leave foster children under the age of 10 alone without competent adult supervision or foster children above that age except as might reasonably be done by a prudent parent in the case of his or her own children. Regardless of the child's age, the reasonable and prudent parent standard must be applied when selecting a babysitter. A caregiver should consider the age and development of the child; the child's mental health history, including any triggers that may endanger the child or others in the household; the child's comfort with the babysitter; the competence and maturity of the babysitter; and the babysitter's experience in caring for children.

A background check/clearance is not legally required for a babysitter. SSL §424-a does not authorize SCR screening, and SSL §378-a does not authorize a criminal history record check of a babysitter.

*Is a child in foster care allowed to attend events without the caregiver's supervision?*

A child in foster care is allowed to attend events without the caregiver's supervision. See the standard set forth above for foster parents stated in 18 NYCRR 443.3(b)(3). The adult providing supervision does not have to be the foster parent or caregiver. For all children, regardless of age, the reasonable and prudent parent standard must be applied to determine if participation in the event is appropriate.

When applying the reasonable and prudent parent standard, the caregiver should consider the age and maturity of the child, the child's history with responsible behavior, whether the activity is developmentally appropriate, the caregiver's familiarity with the child, verifying the contact information (e.g., cell phone number) for the adult who will be supervising the event, traveling with the child to the event to meet face-to-face the person(s) supervising/hosting the event, and knowing the location of the event. Additionally, the caregiver should provide to the child and the adult supervising the event his/her contact information in case of an emergency.

*Is a child in foster care allowed to stay home alone in the foster home for a limited time?*

OCFS regulation 18 NYCRR 443.3(b)(3) states that foster parents will never leave foster children under the age of 10 years without competent adult supervision or foster children above that age except as might reasonably be done by a prudent parent in the case of his or her own children. For a child 10 years of age or older, the caregiver must apply the reasonable and prudent parent standard to determine whether a child is allowed to stay home alone for a limited time. The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, familiarity with the child, and the child's comfort with being home alone.

*Is a child in foster care allowed to babysit?*

A child in foster care may be allowed to babysit, but cannot be required to do so. In determining whether to allow a child in foster care to babysit, the caregiver should consider the age and maturity of the child, the child's history with responsible behavior, any behavioral issues that could put other children at risk of harm, whether it is developmentally appropriate, and the child's comfort with being a babysitter.

*Is the child in foster care allowed to have his/her picture taken for the school yearbook, school and non-school sports team, other extracurricular activities (e.g., dance club, theatre)?*

A child in foster care is allowed to have his/her picture for a school yearbook, school and non-school sports team, and other extracurricular activities, etc. as long as there is no indication that the child is in foster care.

*Is a child in foster care allowed to go to overnight summer camp?*

Permission for a child in foster care to participate in overnight summer camp must be granted by the applicable local department of social services commissioner or designee (18 NYCRR 431.13). Prior to seeking permission, caregivers are encouraged, where appropriate, to engage the birth/adoptive parent, guardian or prior caretaker, and child (if age appropriate) in determining whether a child should participate in overnight summer camp. Caregivers must

apply the reasonable and prudent parent standard when considering overnight summer camp, including the child's interest in the overnight summer camp; the age and development of the child; the child's mental health history, including any triggers that may endanger the child or others at the camp; and the child's comfort with staying out overnight.

*Is a child in foster care allowed to attend prom and post-prom activities?*

In applying the reasonable and prudent parent standard, a determination can be made as to whether a child may go to the prom and participate in post-prom activities. The caregiver should consider the child's age and maturity, the child's history of responsible behavior (e.g., performance in school, returning home by curfew), and engage (where appropriate) the birth/adoptive parent, guardian or prior caretaker and child in the decision-making. If it is determined that the child is not allowed to attend the prom and/or post-prom activities, the reason for this determination should be explained to the child.

Reasonable costs associated with a prom (e.g., dress or tuxedo) should not serve as a barrier to the youth attending the prom. Caregivers should contact the child's case worker, case planner, case manager to discuss independent living or special payments available pursuant to OCFS regulation 18 NYCRR 427.3(c)(2) funds that may be available to support participation in the prom.

*Can a child in foster care have a part-time job?*

Having a part-time job is a normative experience for adolescents. OCFS regulation, 18 NYCRR 441.10 recognizes the importance and value of work experiences for youth in foster care as they offer opportunities for beneficial skill development. Caregivers must apply the reasonable and prudent parent standard when considering whether a child is ready for a part-time job. Considerations should include the age and maturity of the child, the child's history of responsible behavior, the type of job, how the child will travel to/from the job, the number of hours and time in which the child shall work, how the job may impact the child's ability to perform academically, and the types of skills the child will develop from a part time job.

*Is a child allowed to obtain a driver's license?*

New York State law states that once a child turns the age of 16, he or she is eligible to pursue a driver's license. For those children in foster care who are under the age of 18, a parent or legal guardian must sign the consent section of the driver's license application. When determining whether or not a child who is age 16 or older should be able to obtain a driver's license, a caregiver must apply the reasonable and prudent parent standard. The caregiver should consider the maturity of the child, the child's history with responsible behavior, familiarity with the child, and insurance coverage for the child (not offered by the Office of Children and Family Services). Additionally, the caregiver should engage the child and, if appropriate, the birth/adoptive parent, guardian or prior caretaker in determining whether or not the child has permission to pursue a license.

*Is a child in foster care allowed to travel alone via public transportation?*

A caregiver may grant a child in foster care permission to travel alone via public transportation. Prior to this determination, the caregiver should consider the age and maturity of the child, if it is developmentally appropriate, the child's history with responsible behavior, familiarity with the child, the distance the child is traveling, the reason for which the child is traveling, and the child's comfort with traveling alone via public transportation. Additionally, the caregiver should engage the child and, if appropriate, the birth/adoptive parent, guardian or prior caretaker when determining whether or not to permit a child to travel alone on public transportation.

*Is a child in foster care allowed to ride in a car without the caregiver to/from school and other activities (e.g., travel home after sports practice)?*

A caregiver may permit a child to ride in a car (including a friend's car) without the caregiver to/from school and other activities. The caregiver must apply the reasonable and prudent parent standard when determining whether or not to allow a child to ride in a friend's car. The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, familiarity with the child, familiarity with the child's friend, and the distance that is being traveled. Additionally, the caregiver should engage (where appropriate) the birth/adoptive parent, guardian or prior caretaker when determining whether or not to permit a child to ride in a friend's car to/from school and other activities.

*Is a caregiver allowed to consent to piercings and tattoos?*

A caregiver may not provide consent for piercings or tattoos of a child in foster care. Public Health Law §460-a requires that a person be age 18 years or older in order to obtain piercings and tattoos. For those under the age of 18 years, proof of consent from a parent or legal guardian must be provided.

*Is a child in foster care allowed to go hunting?*

Environmental Conservation Law §§ 11-701 and 11-929 set forth the standards for the age at which a child may hunt, what weapons may be used, where consents are required, and the need for adult supervision. Even if the child in foster care is legally authorized to hunt, where appropriate, the birth/adoptive parent, guardian or prior caretaker should be consulted before he or she is given permission to do so. In addition, the caregiver must obtain prior permission from the local department of social services commissioner or designee before allowing a foster child in the caregiver's care to hunt. Additionally, the caregiver must apply the reasonable and prudent parent standard in determining whether to allow a child to participate in hunting; this includes considering the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, the child's history with hunting, supervision of the child while hunting (if the child is under the age of 16), and familiarity with the child.

*Is a child in foster care allowed to operate an ATV?*

Vehicle and Traffic Law § 2410 is very specific and limiting regarding the operation of ATVs by children under the age of 18. Before making any determination regarding the foster child's

operation of an ATV, Vehicle and Traffic Law § 2410 must be consulted. It may also be advisable for the caregiver to confirm his or her understanding of the law with local law enforcement and document law enforcement's response. If it is determined that the age and qualifications of the child and the site to be used meets the legal specifications, the caregiver must be certain that all necessary safety training is completed, the child has the appropriate protective gear, and there is appropriate supervision by a qualified adult during the child's operation of the ATV.

In applying the reasonable and prudent parent standard to a decision regarding the child's operation of an ATV in accordance with Vehicle and Traffic Law, the following characteristics of the child must be considered: the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, and the child's experience with operating an ATV. The caregiver should engage (where appropriate) the child's birth or adoptive parent or guardian, and the case worker, case planner, or case manager, in making this decision.

## Appendix 7-E

### Notice of Existence of Report (Sent by a custodial agency where children are in foster care in a different LDSS)

RE: NYS CASE # \_\_\_\_\_ REPORT ID # \_\_\_\_\_  
REPORT DATE \_\_\_\_\_

This is to inform you that \_\_\_\_\_, a child(ren) placed in your care and custody, has been named in a report of suspected abuse or maltreatment. The foster parent(s) named the subject(s) of the report is/are \_\_\_\_\_.

This report, which was received by the New York Statewide Central Register of Child Abuse and Maltreatment (State Central Register) on \_\_\_\_\_, has been transmitted to the \_\_\_\_\_ County Department of Social Services child protective service unit for investigation as required by SSL §§422 and 424.

SSL §424 allows the local child protective service 60 days from the time of receipt of the report to complete a full investigation of the allegations contained within the report as well as an evaluation of the care being provided to the child(ren) placed in the home.

If the report is determined to be "unfounded", meaning that there is no credible evidence to prove the child was abused or maltreated, all information regarding the child(ren) and the subject of the report will be sealed in the State Central Register. If the report is determined to be "indicated", meaning there is some credible evidence that the child was abused or maltreated, the information will remain on file in the State Central Register.

After the investigation is completed you will be notified of the report determination. As the agency with care and custody of this child(ren), you will receive copies of the State Central Register reports if the report is indicated. If the report is unfounded you will be notified of the determination and it will be suggested that you update your records as to the unfounded determination.

If you wish to receive more information about this report, please contact \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

Commissioner, \_\_\_\_\_ County DSS

cc: Authorized Agency Supervising the Placement

*Source:* OCFS Child Protective Services Manual, [Appendices](#), Page B-6

**Appendix 9-A: Justice Center Mandated Reporters**

Physician	Psychologist	Licensed physical therapist
Registered physician assistant	Registered nurse	Licensed occupational therapist
Surgeon	Licensed practical nurse	Hospital personnel engaged in the admission, examination, care, or treatment of persons
Medical examiner	Nurse practitioner	Christian Science practitioner
Coroner	Social worker	School official, including but not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator, or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate
Dentist	Emergency medical technician	Social services worker
Dental hygienist	Licensed creative arts therapist	Any other child care or foster care worker
Osteopath	Licensed marriage and family therapist	Mental health professional
Optometrist	Licensed mental health counselor	Person credentialed by OASAS
Chiropractor	Licensed psychoanalyst	Peace officer
Podiatrist	Licensed behavior analyst	Police officer
Resident	Certified behavior analyst assistant	District attorney or assistant district attorney
Intern	Licensed speech/language pathologist or audiologist	Investigator employed by a district attorney
		Other law enforcement official

SSL §488(5) & (5-a)

## Appendix 9-B: Social Services Law §488(1)

Definitions. As used in this article, the following terms shall have the following meanings:

1. "Reportable incident" shall mean the following conduct that a mandated reporter is required to report to the vulnerable persons' central register:

(a) "Physical abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

(b) "Sexual abuse," which shall mean any conduct by a custodian that subjects a person receiving services to any offense defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law; or any conduct or communication by such custodian that allows, permits, uses or encourages a service recipient to engage in any act described in articles two hundred thirty or two hundred sixty-three of the penal law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of a service provider shall not be considered a custodian if he or she has sexual contact with another service recipient who is a consenting adult who has consented to such contact.

(c) "Psychological abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a service recipient's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a service recipient as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.

(d) "Deliberate inappropriate use of restraints," which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a service recipient's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other person. For purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

(e) "Use of aversive conditioning," which shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive

conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices.

(f) "Obstruction of reports of reportable incidents," which shall mean conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment or supervision of a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

(g) "Unlawful use or administration of a controlled substance," which shall mean any administration by a custodian to a service recipient of: a controlled substance as defined by article thirty-three of the public health law, without a prescription; or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article thirty-three of the public health law, at the workplace or while on duty.

(h) "Neglect," which shall mean any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient. Neglect shall include, but is not limited to: (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; (ii) failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the facility or provider agency, provided that the facility or provider agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article sixty-five of the education law and/or the individual's individualized education program.

(i) "Significant incident" shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but shall not be limited to:

(1) conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; or

(2) conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment

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practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services, including but not limited to:

(A) unauthorized seclusion, which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;

(B) unauthorized use of time-out, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons;

(C) except as provided for in paragraph (g) of subdivision one of this section, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a service recipient;

(D) inappropriate use of restraints, which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is inconsistent with a service recipient's individual plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; or

(3) any other conduct identified in regulations of the state oversight agency, pursuant to guidelines or standards established by the executive director.

## Appendix 10-A: Protecting Confidential Information



## OCFS Security Guidelines



## Protecting Confidential Information

### 🔒 Maintain confidentiality 24/7

Protecting confidential information encompasses all spoken, handwritten, printed and electronically transmitted notes and communications. When you make case visits, be sure to keep client-identifiable casework documentation with you at all times and *never allow* unauthorized individuals to view the information. Remember that all case and system information must be used *only* for legitimate business purposes. If you must keep hard copies of confidential information at your desk, *always* lock your desk whenever you are away from it. If hard copies need to be discarded, *always* run them through a cross-cut shredder.

### 🔒 Don't kick this habit

It's easy to become complacent or to think, "I'll only be away from my computer for a few minutes." If you are logged on to the system, *always* lock your computer (or log off the network) by holding down the **Ctrl+Alt+Del** keys at the same time. Do this *every time* you leave your desk; this helps prevent unauthorized individuals from using your User ID and password to access the network. **80% of security breaches are unauthorized people using an authorized user's computer, NOT hacking in from outside.**

### 🔒 Hit the road, but...

Be particularly careful when using portable electronic devices, such as laptop computers, Quick Pads, voice recorders and PDAs. Don't leave confidential information on these devices longer than is absolutely necessary. If the device has the ability to transmit information, avoid transmitting confidential information over wireless connections or unsecured public connections. When traveling with the device, keep it with you at all times; *never* check it into airline luggage systems.

### 🔒 Exercise care with voicemail and e-mail

When conducting casework or other legitimate business contacts by phone, it's inevitable that you may sometimes need to leave a voicemail message or send an e-mail to a contact. *Never* include confidential information in voicemail you leave or e-mail you send.

### 🔒 Don't convey confidential information where others can intercept it

Caseworkers have an obligation to preserve the confidentiality rights of the children and families with whom they work. Other staff may also have legitimate access to this information. If you must discuss confidential information on the phone, avoid areas where your conversation can be overheard. Remember that cellular phone lines are not sufficiently secure to be appropriate when discussing confidential information. *Never* save confidential information to the hard drive of *any* desktop computer. Check the permission levels on your Microsoft Outlook folders; make sure you understand what each level of access means and assign permissions on a need to know basis *only*.

### 🔒 The walls have ears

Be mindful of protecting confidential information in areas where you can be easily overheard, such as in cubicle areas.

### 🔒 Use follow-through when faxing

If you need to transmit any confidential information via fax, call first *before* sending the fax, in order to alert the intended recipient that you are sending a fax. Be sure to call the recipient afterward, too, to verify that the fax was received *and* that it was not left on the fax machine. Avoid faxing confidential information whenever possible.

**Security is everyone's responsibility.**

*Always follow established security protocols to help protect confidential information.*

## Appendix 12-A: Strengths, Needs and Risks Scales

### *Family Functioning Scales*

- |  |                             |
|--|-----------------------------|
| 1. Support System                            | 4. Neighborhood Environment |
| 2. Financial Resource Management/Basic Needs | 5. Living Conditions        |
| 3. Stability of Housing                      |                             |

### *Child Scales*

- |  |  |
|--|--|
| 1. Physical Health*                    | 8. Child Behavior*                         |
| 2. Physical Health Care                | 9. Alcohol Use Within Past 2 Years*        |
| 3. Mental Health*                      | 10. Drug Use Within Past 2 Years*          |
| 4. Mental Health Care                  | 11. Child/Family Relationships*            |
| 5. Bonding & Attachment (under age 2)  | 12. Interpersonal Skills (age 6+)          |
| 6. Child Development/Cognitive Skills* | 13. Nutrition, Clothing & Personal Hygiene |
| 7. Academic Performance (age 6+)       |  |

### *Parent/Caretaker Scales*

- |   |   |
|---|---|
| 1. Caretaker Abused/Neglected as a Child                        | 10. Drug Use Within Past 2 Years                    |
| 2. Physical Health  | 11. Criminal History                                |
| 3. Physical Health Care   | 12. Motivation/Readiness to Change*                 |
| 4. Mental Health  | 13. Parent/Caretaker Expectations of Children*      |
| 5. Mental Health Care   | 14. Parent/Caretaker Acceptance of Children         |
| 6. Ability to Cope With Stress*                                 | 15. Parent/Caretaker Discipline of Children*        |
| 7. Cognitive Skills   | 16. Parent/Caretaker Supervision*                   |
| 8. Relationships Among Caretakers and Other Significant Adults* | 17. Problem Solving Skills*                         |
| 9. Alcohol Use Within Past 2 Years                              | 18. Recognizes and Attends to Needs of All Children |

*\*Required for Initial FASP*

## Appendix 12-B Categories of Family Strengths

### *Cognitive and appraisal skills (problem solving)*

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Examples:

- Sees the world as most other people in the same culture see it
- Can understand the causes and effects of his or her own, and others' actions
- Can describe facts, events, and feelings so others understand them
- Looks ahead and plans for events and/or problems
- Learns and uses new skills to solve problems
- Can apply old skills in new situations to solve problems
- Considers and weighs various solutions for solving problems
- Accepts constructive criticism and makes changes based on it
- Is interested in learning new things, trying new experiences, and meeting new people
- Can manage money
- Gains feelings of competence and confidence from past and current successes
- Sets goals for self and makes efforts to achieve them
- Wants to improve current circumstances for self and family

### *Defense and coping mechanisms (coping skills)*

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Examples:

- Can control impulsive behavior when there would be negative consequences
- Can change plans when there are unexpected changes in a situation
- Can deal with daily irritations and annoyances of life without overreacting or falling apart
- Can think clearly and act in a way that is helpful in a serious crisis
- Acknowledges mistakes and asks self how things could be handled differently the next time
- Does not allow self to be treated with disrespect or to live in fear
- Finds little, safe ways to relieve pressure, relax, and comfort oneself
- Is frequently looking for new ways to manage stress, solve problems, and make ends meet
- Can use humor to deal with difficult situations or make others laugh, but not in ways that hurt or tear down others
- Remembers where they "came from" by maintaining and celebrating their past connections and heritage
- Is interested in learning new things, trying new experiences, and meeting new people

### *Temperamental and dispositional factors (emotional strengths)*

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Examples:

- Expresses affection, love, and concern for family members and intimate others
- Aware of and recognizes one's feelings (e.g., happiness, sadness, love, anger, grief)
- Naturally expresses the range of emotions without harming self and others
- Is generally positive about life and feels hope for the future
- Feels anger at injustice, betrayal, or personal hurt

- Can be flexible with gender roles
- Can appropriately express sexual feelings
- Conveys empathy and sensitivity towards feelings of others

### *Interpersonal skills and supports (relationships)*

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#### Examples:

- Has a friendly relationship with acquaintances, neighbors, store clerks, etc.
- Has a number of old and new friends who are seen regularly, are fun, and can be depended on.
- Has a deep and intimate relationship with one other person
- Has satisfying relationships with family members
- Can depend on family members and friends and accept their care and help when needed
- Performs social roles appropriately and feels satisfaction in them (e.g., parent, spouse, son, daughter)
- Can listen to others
- Can confide in some others and feel listened to
- Has realistic expectations in relationships and makes appropriate choices (e.g., does not constantly feel hurt, needy, betrayed, or used)
- Can deal with disagreement/conflict in a relationship
- Can forgive others; doesn't carry a grudge or seek revenge
- Wants financial and personal interdependence with others

### *External factors (capacity to constructively use resources outside of the self)*

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#### Examples:

- Knows what institutions/community agencies can provide assistance and is able to find them and get what is needed
- Knows how to find out about local resources and events and uses them to meet family needs
- Has adequate income to provide food, shelter, clothing, and some of the "little luxuries" in life for self and family
- Has good relationships with others in the immediate neighborhood and could call on them if necessary
- Is connected to other communities through culture, shared interests, or commitments (e.g., children's school or activities, community projects, church)
- Uses organizations, family, and friends as a way to preserve and celebrate meaningful cultural, ethnic, or religious events and traditions
- Is willing to seek help and share problem situations with trustworthy others

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### *Insight (self-understanding)*

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#### Examples:

- Perceives cause and effect of behavior relative to the child's unmet needs for safety, permanency, and well-being
- Recognizes how own needs are expressed in behavior
- Gains feelings of competence and confidence from past and current successes
- Understands own needs and how they motivate behavior
- Recognizes progress, or lack thereof, in change-related activities
- Recognizes conditions that undermine safety or contribute to risk

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### *Independence (ability to separate)*

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#### Examples:

- Can make decisions and take actions on own
- Maintains a physical environment that is safe
- Can stick with a task even through discouraging setbacks
- Can manage money
- Maintains good health
- Sets goals for self and makes efforts to achieve them

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### *Morality (sense and value regarding right and wrong)*

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#### Examples:

- Has an understanding of right and wrong, from own cultural perspective
- Wants to improve current circumstances for self and family
- Values compassion, fairness, and decency
- Trusts others until given a reason to find them untrustworthy
- Is reliable and can be counted on to follow through and keep own word
- Speaks up and takes a stand or action against injustices
- Respects the rights of others
- Is willing to accept responsibility for own actions or role in problem situations
- Is responsible in sexual activities
- Is concerned about the meaning of life
- Engages in activities that express spirituality (e.g., religious affiliation and attendance, connecting with nature, meditation, exploring wisdom of traditions)

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### *Spirituality*

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#### Examples:

- Is concerned about the meaning of life
- Is affiliated with a religion

- Connects with nature
- Meditates
- Explores wisdom of traditions
- Able to rely on faith/spirituality during times of crisis

### *Creativity*

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#### Examples:

- Can create emotional safety through healthy imagination and play
- Expresses feelings through art and creativity
- Appreciates creativity in others
- Gains satisfaction from engaging in activities that require designing, creativity, or artistic talent
- Uses creativity to deal with feelings of hurt or anger
- Uses art to gain perspective on self and life

### *Humor*

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#### Examples:

- Can laugh at self and situations
- Uses humor constructively to diffuse tension or deal with difficult situations (without hurting or insulting others)
- Uses humor to deal with feelings of hurt or anger
- Uses humor to gain perspective on self and life

*Source: OCFS Family Assessment and Service Plan Guide*