



- purpose and scope

- setting the goal of adoption

- reasonable efforts and documentation of efforts

- freeing the child for adoption through surrender

New York State Office of Children and Family Services

Adoption Services Guide

for Caseworkers

- termination of parental rights and expedited adoptions

- role of caseworker in termination proceedings

- services to birth parents

- services to the child

- services to foster parents

- services to adoptive parents

- adoptions with special circumstances

- adoption subsidy

- adoption-related systems support overview

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Chapter One

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A. OVERVIEW

The New York State Office of Children and Family Services (OCFS) is pleased to offer this Adoption Services Guide to support caseworkers who provide adoption services to children in foster care and their families as well as those who serve children surrendered directly to voluntary authorized agencies in New York State. The guide provides an overview of the basics of adoption practice and the responsibilities of adoption caseworkers in New York State, along with pertinent laws, regulations, and policy guidelines. Its primary intended audience is frontline caseworkers, but the information in the guide may also be helpful to supervisors, administrators, and attorneys. Links to additional sources of information are included in the guide.

The guide is intended to support—not replace—training, supervision, and legal guidance from agency attorneys. Each of these is an important component of the support caseworkers need to competently provide adoption services. Caseworkers are encouraged to become familiar with the laws, regulations, and policies that govern adoption practice through the use of this guide and in available trainings, while also taking full advantage of ongoing supervision and case-specific legal consultation from agency attorneys.

As noted above, the focus of the guide is the adoption of children from the public foster care system and children who are surrendered directly to voluntary authorized agencies in New York State. While some of the material in the guide may be relevant to other types of adoptions, such as the domestic adoption of infants who live in the United States and are adopted through private adoption agencies or independently, or the international adoption of infants and children from other countries by U.S. citizens, these types of adoptions are not the guide’s focus, and the contents should not be used to guide practice in those areas.

Finally, while the guide’s primary subject concerns achieving the outcome of permanency for children through adoption, it was written within the broader context of the goals and outcomes for the child welfare system in New York State and across the country. These goals and outcomes have been articulated through the passage of the federal Adoption and Safe Families Act of 1997 (ASFA) and subsequent federal and state legislation and policy guidance, and are defined as follows:

Safety

- Children are, first and foremost, protected from abuse and neglect.
- Children are safely maintained in their homes whenever possible and appropriate.

Permanency

- Children have permanency and stability in their living situations.
- The continuity of family relationships and connections is preserved for children.

Well-Being

- Families have enhanced capacity to provide for their children's need
- Children receive appropriate services to meet their educational needs.
- Children receive adequate services to meet their physical and mental health needs.

B. DEFINITION OF ADOPTION SERVICES

Adoption is a highly specialized field that involves placing children with families and providing services to support the permanency of these placements. In recent decades, the emphasis of adoption practice has shifted from helping families find children to finding safe and permanent families for children in foster care. Adoption caseworkers are expected to have extensive knowledge and understanding of the recruitment and assessment of adoptive families, preparation of children and families for adoption, placement of children with a variety of strengths and needs, and supportive post-adoption services to promote attachment and permanency for children.¹

In New York State, *adoption* is defined by the Domestic Relations Law (DRL) as “the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person.” (NYS DRL, §110)

Adoption services are defined in both law (statute) and regulation in New York State. There are some differences between the two definitions, as shown below.

Social Services Law (SSL) defines the adoption services that local social services districts are required to provide, either directly or through a purchase of service, to each child in their care who is freed for adoption. [SSL 372-b(2)] Prospective adoptive parents have a right to a fair hearing if they are not provided with adoption services included in the statute. SSL defines adoption services to include the following:

- evaluation of a child's placement needs and pre-placement planning;

¹ Child Welfare Information Gateway (2006). *The Basics of Adoption Practice: A Bulletin for Professionals*. Washington, DC: U.S. Department of Health and Human Services. Retrieved from http://www.childwelfare.gov/pubs/f_basicsbulletin/index.cfm

- recruitment of and home study for prospective adoptive parents;
- training of adoptive parents;
- placement planning and supervision; and
- post-adoption services.

Book 18 of the New York Codes, Rules and Regulations (NYCRR), commonly referred to as “the regulations,” expands upon the definition of adoption services in the law. [18 NYCRR 421.1(b)] The regulatory definition defines adoption services as assisting a child to secure an adoptive home through:

- counseling with a child’s birth parent or legal guardian concerning surrender of, or legal termination of, parental rights with regard to the child;
- evaluation of the child’s placement needs;
- pre-placement planning;
- recruitment, study, and evaluation of interested prospective adoptive parents;
- counseling for families after placement (including birth families under certain circumstances);
- supervision of the child in the adoptive home until legal adoption; and
- counseling of the adoptive family after legal adoption.

C. EMPHASIS ON PERMANENCY

1. Background

Both federal and New York State law and regulations emphasize the importance of permanency for children who have been removed from their homes and placed into foster care. Permanency in child welfare means legally permanent, nurturing families for children. Child welfare professionals first work on preserving the family and preventing the need to place children outside of their home. When it is determined that children must be removed from their home to protect their safety, permanency planning efforts focus on returning them home as soon as is safely possible or placing them with another permanent family. Other permanent families may include adoptive families, guardians, or relatives who obtain legal custody or guardianship.

Children are to be removed and placed out of their home only if reasonable efforts to keep them safe at home are unsuccessful or inappropriate. From the first day in foster care, child welfare staff should start making efforts to return children home or help them find another permanent family. Permanency planning involves decisive, time-limited, goal-oriented activities to maintain children within their families of origin or to place them with other permanent families.

While foster care is now widely recognized as a temporary service, this was not always the case. Recognition of the importance of permanency in child welfare services

in the United States began in the 1950s with research showing the detrimental effects of long-term foster care and separation of children and families. However, throughout the 1970s, child welfare services continued to be seen through the lens of long-term caretaking rather than permanency. Many children who were removed from their families for their protection never returned home, nor did they achieve permanency through adoption. Rather, they spent their childhoods in foster care.

Research and demonstration programs in the 1960s and 1970s brought necessary attention to the need for permanency in children's lives. The ground-breaking federal Adoption Assistance and Child Welfare Act of 1980, also known as Public Law (P.L.) 96–272, re-conceptualized foster care as a temporary service. Family involvement, prevention of foster care placement, assessment, planning, and permanency became core elements of child welfare practice.

2. Adoption and Safe Families Act of 1997 (P.L. 105-89)

ASFA furthered the aims of P.L. 96–272 by emphasizing the health and safety of children as the paramount concern that must guide all child welfare services. [42 USC 671 (a)(15)] ASFA also strengthened the time limits within which children in foster care should be placed with permanent families, and enacted a system of accountability for child welfare services. ASFA emphasized adoption by establishing criteria when termination of parental rights had to be sought except for specific circumstances. This included shortening the time frame for initiating proceedings for the termination of parental rights and identifying the circumstances under which reasonable efforts to reunify children with their birth families are not required. In addition, ASFA provided incentive payments to states to provide resources to support adoption of children from foster care.

ASFA amended Title IV-E of the federal Social Security Act, an important part of federal law that governs child welfare including, but not limited to, foster care and adoption services. The amendment requires a focus on permanency for the child and stresses that in making reasonable efforts to prevent removal or to finalize a child's permanency plan, the child's health and safety must be the paramount concern.

Some of the major provisions of ASFA are summarized as follows:

- affirmation that permanency planning includes reunification, as long as it can be established that it is consistent with the health and safety of the child;
- identification of concurrent planning as a means to hasten permanency for children;
- requirements for reasonable efforts to be made to achieve permanency for children and to finalize a permanency plan;
- allowance for “no reasonable efforts” to be made in relation to reunification under certain circumstances;
- specific time frames to achieve permanency for children; and
- requirements for the filing of petitions to terminate parental rights for children in foster care for 15 of the last 22 months; for children who have been

abandoned; and for children whose parents have committed certain specified serious crimes against the child or another child in the family, except under specified circumstances (*see Chapter 5*).

3. Recent Legislation to Support Permanency

New York State law was changed in 1999 and again in 2000 to implement various federal Title IV-E requirements, including those enacted by ASFA. In addition, in 2005, New York State enacted comprehensive permanency legislation (Chapter 3 of the Laws of 2005). Among the provisions of this chapter are the promotion of permanency, safety and well-being of children removed from their homes through more timely and effective judicial and administrative reviews and case planning.

In 2008, the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351) was enacted. Among the many provisions of this Act: amendment of the Social Security Act to extend and expand adoption incentives to states; creation of an option to extend eligibility for Title IV-E foster care, adoption assistance, and kinship guardianship payments to age 21; the de-linking of adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility; and the provision that federally-recognized Indian Tribes may operate a Title IV-E child welfare program.²

D. STATE LEGISLATIVE INTENT REGARDING TERMINATION OF PARENTAL RIGHTS

Included in New York State’s Social Services Law (SSL) §384-b, which governs termination of parental rights, is a detailed statement about the New York State Legislature’s findings and intent in passing this section of law. The statement makes clear that the state’s philosophy is to attempt to balance the rights of birth parents with the rights and needs of the child, including the health and safety of the child.

The statement of legislative findings and intent reads as follows:

- (a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:
 - (i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;
 - (ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child’s need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;
 - (iii) the state’s first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

² U.S. Department of Health and Human Services (2008), Program Instruction ACYF-CB-PI-08–05.

- (iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.
- (b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures that not only assure that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption. [SSL §384-b(1)]



RESOURCES

- For more information on permanency and adoption law, see:
- *Concept and History of Permanency in U.S. Child Welfare*, on the Child Welfare Information Gateway website sponsored by the Administration for Children & Families, U.S. Department of Health and Human Services at <http://www.childwelfare.gov/permanency/overview/history.cfm>
- A summary of major federal legislation, also on the Child Welfare Information Gateway site at http://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.showForm

Chapter Two

Setting the Goal of Adoption

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A. BACKGROUND

1. Permanency Planning and Permanency Planning Goals

The process of permanency planning is intended to provide a safe, permanent, family for children by preventing their placement into foster care when possible and, when they must be placed, limiting the time they spend in foster care. It is widely acknowledged that separation, loss, and unresolved grief, as well as the uncertain and potential long-term nature of the foster care experience, can have a negative effect on children's overall sense of belonging, identity formation, and emotional well-being.¹ Placement of a child in foster care is meant to be temporary, with an emphasis on immediate, ongoing, and effective permanency planning for the child.

The child's permanency planning goal (PPG) states the goal for the child's permanent living arrangement upon the child's discharge from foster care. The permanency plan for nearly all children entering foster care is, at least initially, reunification with their family. When safe reunification is not possible, other permanent living arrangements are sought, such as living with another relative, adoption, or guardianship.

Depending upon local district protocol, the social services district or a voluntary authorized agency caring for the child under contract with the local district establishes the child's PPG and records it in the Uniform Case Record (UCR) in CONNECTIONS and in Permanency Hearing Reports. The Family Court is required to review the child's permanency planning goal at each permanency hearing in order to approve the PPG or modify it

By law, the Family Court has oversight responsibility for many child welfare cases, including all cases of children placed in foster care. Like local social services districts and voluntary agencies, the Family Court is also charged with expediting

¹ G. Mallon, & B. Leashore, eds. (2002). *Contemporary Issues in Permanency Planning*. Washington, DC: CWLA Press.

permanency for children in foster care. Unless there is an appeal, the Family Court judge is the final decision-maker in many key child welfare decisions, including but not limited to terminating parental rights and finalizing adoptions. Caseworkers, in consultation with supervisors and agency attorneys, need to work closely with their Family Court to facilitate this process. (*See Chapter 5 for more information about the role of the Family Court in foster care and adoption cases.*)

Permanency planning goals for children in foster care are set forth in OCFS regulation (18 NYCRR 430.12) and policy as follows:

- Return to parent(s)
- Placement for adoption
- Referral for legal guardianship
- Permanent placement with a fit and willing relative
- Placement in another planned living arrangement with a permanency resource
- Adult residential care

2. Service Plan Reviews

Periodic service plan reviews are required under both federal and state law for children placed in foster care. The service plan review (SPR) provides an important opportunity to review the facts of the case as well as the progress, or lack of progress, toward achieving the child's permanency planning goal. During this process a decision may be reached to change direction and to determine whether to seek a surrender of the child or pursue termination of parental rights to free the child for adoption. [18 NYCRR 428.9; 430.12(c)(2)]

The purpose of the service plan review is to convene a case conference at least every six months to (1) review progress made by the family and service providers through implementation of the previous service plan; (2) identify issues of concern; and (3) suggest modifications that impact on and inform the development of a new service plan for the case. The review panel must develop a written statement of the conclusions and recommendations and must identify barriers to permanency and any other issues that must be addressed in the new service plan.

A significant focus of the service plan review should be the status of, and progress toward, the child's permanency plan, including the appropriateness of the child's PPG. If concurrent planning is occurring on the case, progress on the permanency plan associated with the child's PPG, as well as the alternative permanency plan, should be evaluated and adjustments made, as appropriate.

If the decision has been made that adoption is the most appropriate permanency plan for the child, a thorough assessment of progress toward that goal should be made. There should be a discussion of the steps that will be taken, and by whom, to progress from the current status through to adoption finalization, rather than focusing solely on the next step in the process. If the child is not yet legally free, the steps being taken to

terminate parental rights, including the appropriateness of a surrender, should be assessed to accomplish this as expediently as possible. The discussion should include whether there is an adoptive resource identified and, if not, how progress will be made on in that regard while the termination of parental rights is moving forward. Waiting for each step to be completed before planning for the next steps wastes valuable time in finalizing the child's permanency plan.

If the child is legally free for adoption at the time of the service plan review but is not yet in an adoptive placement, the service plan review should focus on a detailed discussion of the reasons for this and how obstacles will be overcome. Creative strategies for identifying potential adoptive resources for the child should be explored with a clear plan developed by the end of the service plan review.

The willingness of the foster parents to adopt should be carefully evaluated, if it hasn't been already, as well as the availability of relatives. Consideration should be given to re-contacting relatives and other important persons in the child's life who may have been contacted in the past about their interest in adopting the child as their circumstances could have changed. Plans to re-review the case record and speak with the child about potential adoptive resources should be made. The service plan review is not the venue at which this work is usually actually done, but there should be a clear plan of action made at the service plan review, with clarity about who will do what and when, before the conclusion of the review. Another service plan review can be scheduled sooner than the next required review in six months if that is a helpful strategy for moving the permanency plan forward for the child.

RESOURCES



For more information about Service Plan Reviews, see:

- The appendix for this chapter.
- *Strengthening Service Plan Reviews: A Practice Paper*. This paper was issued as an Informational Letter in 2004 (04-OCFS-INF-09) and is available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2004/.

3. Permanency Planning for Older Youth

It is important to be aware that the last two permanency planning goals listed (*placement in another planned living arrangement with a permanency resource and adult residential care*) may be selected only if the social services district has documented a compelling reason why none of the other PPGs are in the youth's best interest. This is consistent with a shift in NYS policy over the past few years that places a renewed emphasis on the critical importance of permanency for all youth in foster care, even those who are ages 18–21. In 2005, "Independent Living" was eliminated as a PPG in New York State because of the growing body of research with unanimous and clear findings: youth who are discharged from foster care without a permanent family are at high risk for poor outcomes in their adult lives.

One longitudinal study of youth aging out of foster care without permanency found that these youth do not fare well and often experience periods of homelessness,

criminal activity, and incarceration. Many suffer from physical and mental health challenges as a result of past abuse and neglect.² Specific findings about these youth include the following:

- One in five (22%) had lived in four or more places within 18 months of discharge from care.
- More than one-third (37%) had been physically or sexually victimized, incarcerated, or homeless during that time period.
- These youth had considerably more mental health challenges than others in the same age group.
- More than one-third (37%) had not completed high school.
- Only 61 percent were employed after 18 months, and they earned a low median wage.

One study included the following powerful anecdote: A former foster youth who aged out of foster care without permanent connections to caring adults was filling out a job application. When asked to provide an emergency contact person, he wrote “911.” He had no one else.³



RESOURCES

For more information on permanency for adolescents, see:

- *Adolescent Services and Outcomes—Guidance Paper*. This paper was issued as an Informational Letter in 2004 (04-OCFS-INF-07) and is available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2004/
- *Transition Plan Requirements for Youth 18 and Older Aging Out of Foster Care*. This paper was issued as an Administrative Directive in 2009 (09-OCFS-ADM-16) at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/

B. CONCURRENT PLANNING

Concurrent planning is a term used frequently in child welfare since the enactment of the federal Adoption and Safe Families Act of 1997. ASFA amended the Social Security Act to explicitly permit that reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently (at the same time) with reasonable efforts to make it possible for a child to safely return home. In other words, it is permissible to work toward reunification while at the same time establishing and working toward an alternative permanency plan, which is often adoption.

² M. Courtney, I. Piliavin, A. Grogan-Kaylor, & A. Nesmith. (2001). “Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months After Leaving Out-of-Home Care.” *Child Welfare* 80:6, pp. 685–717.

³ B. Holtan. “Defining Permanence for Older Kids.” *Fostering Families Today* (July/August 2004), p. 35.

Concurrent planning differs significantly from a sequential planning approach in which caseworkers do not pursue alternatives until all reunification efforts have been exhausted or the court has ordered termination of parental rights. The sequential approach results in delays in achieving permanency, in part because earlier opportunities to engage parents, relatives, foster parents, or others in identifying alternative paths to permanency are sometimes missed.

In a concurrent planning approach, caseworkers make ongoing efforts toward reunification while at the same time work toward identifying alternative permanency plans. The primary goal of concurrent planning is to move children in foster care more quickly from uncertainty and impermanence to the security of a permanent family. Concurrent planning is also a tool to help achieve:

- safety for children,
- timely permanency decisions for children,
- reductions in lengths of stay in foster care, and
- reductions in the number of moves and relationship disruptions a child experiences while in foster care.

1. Legal Considerations

Although concurrent planning is not a requirement under federal or state law, it is recommended for the majority of cases. Caseworkers should consider the specific circumstances of each case in deciding whether concurrent planning is appropriate for that child and family. State law was amended in 2005 to require that caseworkers document concurrent planning efforts in the permanency hearing report when it is likely that the child will not return home. (FCA 1089(c)(4)(iii))

2. Practice Considerations

Full disclosure is at the very core of concurrent planning, as it is with all effective case planning. Concurrent planning demands an honest, open dialogue among the caseworker, the parents, and the foster parents. It is essential that everyone involved understand their rights and responsibilities to allow for informed decision making. Parents must understand what needs to occur if their children are to be returned to them and what will occur if they do not follow through. Parents also can be active participants in developing an alternative plan and identifying an alternate permanency resource. All good casework includes the family in assessment and planning, addressing the specific conditions and behaviors that must change to reunify the family and to achieve parenting that is positive and lasting.



RESOURCES:

For more information about concurrent planning, see:

- The Supervising Concurrent Planning toolkit and training materials available from OCFS Regional Offices and the Center for Development of Human Services (CDHS) training offices.

These materials include videos and training guides to help supervisors support concurrent planning with caseworkers.

- *ASFA Safety and Permanency*. This paper was issued as an Informational Letter in 2000 (00-OCFS INF-5) and is available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2000/

C. WHEN ADOPTION IS THE APPROPRIATE PERMANENCY PLANNING GOAL

1. Determining the Goal of Adoption

When a child is removed from his or her home and placed in foster care, the social services district must demonstrate to the court that reasonable efforts were made to prevent or eliminate the need for removal, or the court must make a determination that reasonable efforts were not required. Once a child is placed, if the permanency goal is reunification, the social services district must make reasonable efforts to enable the child to return home safely. When the child can not be returned home safely, another permanency goal must be established. Once the goal is established, the social services district must then make reasonable efforts to finalize that goal.

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.⁴ When the agency 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.

A child can become available for adoption as a result of one of the following events:⁵

- Death of parent(s)
- Abandonment
- Permanent neglect
- Inability to care, presently and in the foreseeable future, for the child due to mental illness/mental retardation
- Severe or repeated abuse
- Surrenders
 - Judicial
 - Extra-Judicial

⁴ National Resource Center for Adoption, Spaulding for Children (2008). *Adoption Competency Curriculum*, p.14

⁵ Center for Development of Human Services (2007-08). *Journey Through Adoption Curriculum*, p. 303.

New York State law allows the local Department of Social Services to file a petition to terminate parental rights based on the grounds of permanent neglect, mental illness, or mental retardation only after a child has been in foster care for 12 months. When other grounds exist, a petition to terminate parental rights may be filed sooner. For example, a petition to terminate parental rights on the ground of abandonment may be filed six months after the child was abandoned.

The caseworker, in consultation with supervisors and agency attorneys, must determine the action that is most appropriate to terminate the rights of each of the birth parents, either 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 Family Court that termination of parental rights is in the child's best interests. 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) & (c); 18 NYCRR 431.9]

2. Steps and Time Frames When the Goal of Adoption is Selected

The regulations set forth the following steps and time frames related to establishing a permanency planning goal of adoption [18 NYCRR 430.12(e)]:

For children not legally free:

- Within 30 days of establishing the PPG of adoption, an action to free the child must be initiated.
- The child must be freed within 12 months after establishing the PPG of adoption.

For children legally free:

- For legally free children not living in an adoptive home, placement in an adoptive home must occur within six months after the child was freed for adoption.
- There are exceptions for children placed in facilities operated or supervised by the NYS Office of Mental Health and the NYS Office of Mental Retardation and Developmental Disabilities. [18 NYCRR 430.12(e)(2)]

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. According to OCFS data from 2007, in about 70 percent of cases, the PPG was changed to adoption before the child was freed. In about 11 percent of cases, the child was freed before the goal was changed to adoption, and in about 20 percent of cases, the two events occurred at about the same time (within 30 days of each other.)⁶ Other judges will only allow the termination of parental rights when prospective adoptive parent(s) have been identified. One reason given for this practice is the desire to avoid legally freeing a child if he or she

⁶ NYS Office of Children & Family Services (2007). *Monitoring and Analysis Profiles with Selected Trend Data: 2003–2007*.

does not have a new, permanent family. Children with this status are sometimes referred to in child welfare as “legal orphans” because legally they have no parents. Caseworkers will need to seek guidance from supervisors and agency attorneys to become familiar with preferred procedures in their county.

D. THE CHILD’S PERSPECTIVE ABOUT ADOPTION

Most of the children who become available for adoption have a history of neglect and/or abuse. The caseworker must provide intensive casework services to help children work out their feelings of grief and loss over their life experiences and being separated from their birth parents, as well as to help children understand fully the issues involved and the options available to them. It is imperative that caseworkers understand the impact of loss on children in the child welfare system and be prepared to help children with the grieving process. This difficult work can make caseworkers uncomfortable if they have unresolved grief and loss issues of their own. In this situation, caseworkers should ask their supervisors to help guide and support them so they can effectively provide adoption services.

To learn more about the core issues experienced by the adoption triad (adoptee, birth parent, adoptive parent), see *Seven Core Issues of Adoption* by D. Silverstein and S. Roszia (1986). The seven core issues discussed from the perspective of each triad member are: loss, rejection, guilt/shame, grief, identity, intimacy, and control.

The child’s feelings about his or her birth parents and adoption are an important consideration in planning with and for the child. Some children are anxious to explore the adoption option and, despite the losses they have experienced, are ready to commit to a new family. Some youth may resist forming new attachments because of unresolved losses or interruptions in parenting that make it difficult for them to trust adults. An older child may be reluctant to transfer allegiance from his or her birth parents to an adoptive family. And for some children and youth, adoption is exceptionally challenging due to past relationships and experiences and the impact those have on current behavior. In each of these scenarios, while adoption may be the most appropriate permanency plan for the child, it is important to recognize that children develop differently, have different experiences and reactions to their experiences, and require different degrees of help in mourning their losses and separation from loved ones.

1. Working with Children and Youth

Caseworkers must set an appropriate tone and philosophy for working with children and youth by using skills that include, but are not limited to: engaging the child in the process, listening to the child’s words, speaking the truth, validating the child and the child’s life story, creating a safe place for the child to do his/her grief and preparation work, and acknowledging that pain is part of the process.⁷

Some of the important components of communicating with children of all ages about adoption include:⁸

- Building rapport: It is important to put the child at ease in order to

⁷ National Resource Center for Adoption, Ibid., p. 39

⁸ Ibid.

communicate effectively. Demonstrating respect, empathy, honesty, and understanding is very important tool for building rapport.

- Keeping the child/youth informed: Be honest with the youth by informing them of what you do or do not know about their present situation. Children need to know the truth and be told in developmentally appropriate terms, 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 be able to 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.

2. Child's Consent to Adoption

New York State law states that a child over the age of 14 must consent to adoption unless the court dispenses with that requirement. (*See Chapter 8 for more information about older children who refuse to consent to adoption.*) While many youth welcome becoming part of a new family through adoption, it is not uncommon for an older youth to be ambivalent, or even negative, about adoption. Adolescence is a developmental stage in which the young person searches for their identity, works toward gaining independence, conforms with peers, and rejects parental values. These normal developmental challenges are compounded for adolescents in foster care because of their histories of neglect, abuse, abandonment and/or overall instability in their lives. Some suffer from attachment disorders and have difficulty forming healthy relationships and trust because of their life experiences.⁹ It is therefore not surprising that the idea of bonding with a new family may be met with a lukewarm reaction, at best.

However, permanency for adolescents in foster care, as was discussed earlier in this chapter, is the key to the young person's likelihood of having good outcomes in life. An initial response of "no" to a discussion about adoption with an adolescent should be just the beginning of a series of developmentally appropriate discussions about the youth's future and their need to be connected to caring adults throughout their life. Ongoing casework services should be provided to youth who cannot return home and express ambivalence or negative feelings about adoption. Children may be an excellent source of information about potential permanency resources, including relatives and adults who have been important in their lives.

The decisions to change a child's permanency planning goal to adoption and seek a surrender or file a petition for termination of parental rights are among the most critical

⁹ J. Maple. (May 2002). *Information Packet: Adoption of Adolescents*. Hunter College: National Resource Center for Foster Care & Permanency Planning.

decisions made in child welfare and will have a lifelong impact on the child and their family. These decisions must always be made carefully and deliberately, in consultation with supervisors and an agency attorney, and be based on what is in the best interests of the child.

E. FOSTER PARENTS AS ADOPTION RESOURCES

The vast majority of children adopted from foster care in New York State are adopted by foster parents with whom the child has lived. OCFS data show that in 2008, 1,999 children were placed in adoptive homes in New York State (i.e., an Adoptive Placement Agreement was signed, but the adoption was not necessarily finalized in 2008). For almost all of those children ((96.7%), the prospective adoptive parent(s) were the child's foster parent(s).¹⁰

1. Impact of Length of Placement With Foster Parent(s)

The agency must inform foster parents when a child in the foster parents' care is freed or in the process of being freed for adoption. If the foster parents have not completed an application to become adoptive parents, the agency must inform the foster parents of the procedure for applying to adopt the child. The agency must also inform foster parents if the child in their care who is freed for adoption has siblings or half-siblings who are also freed for adoption.

Foster parents who have cared for a child for 12 continuous months or more have additional rights in relation to the child. (*See Chapter 10 for more information.*) After a child is legally free, the law and regulations give "preference and first consideration" to the adoption application of foster parents with whom the child has lived for a continuous period of 12 months or more. If concurrent planning has been taking place, as is preferred in most cases, the foster parent, birth parents, caseworker, and child (if developmentally appropriate) will already know whether adoption by the foster parent is the alternative permanency plan for the child and will be preparing for that possibility. Caseworkers should be aware that even though the foster parent has preference and the agency supports adoption by the foster parent, a relative could come forward and petition the court for placement of the child at any time. This is one more reason why a diligent search for relatives should take place as early in the case as possible and be repeated as necessary.

Work toward the adoption, including the home study, can and should proceed during the process of terminating parental rights. Working on both processes at once—preparation for the adoption while the termination process is proceeding—is an important strategy for reducing the time between setting the goal of adoption and finalization. [SSL §383(3); 18 NYCRR 421.19(b)&(c)]

When a child who has been in the foster parent(s)' care for 12 continuous months is surrendered, when parental rights are terminated, or when there is a plan to free the child, an authorized agency with an adoption program must accept an application to adopt from foster parents who have had the child in their home for less than 12 continuous

¹⁰ NYS Office of Children and Family Services (2008). *Monitoring and Analysis Profiles with Selected Trend Data: 2004–2008*, p. 24.

months. The regulations provide for a priority system for the order in which home studies are conducted. (*See Chapter 10 for more information about this system.*)

2. When Foster Parents Do Not Wish to Adopt the Child

Even if a child is strongly attached to foster parents who can not or do not wish to adopt, the child may need to be removed from the foster home and placed in a pre-adoptive home. Leaving a child with a foster family that does not intend to adopt the child compromises the likelihood of a permanent family that the child will need throughout his or her life.

Sometimes there may be concern that the psychological damage to the child caused by loss of the nurturing relationship with the foster parent would outweigh the benefits of achieving permanency, at least at the present stage in the child's life. This difficult decision is further complicated when the foster parent is a relative of the child's and is committed to the child but does not wish to adopt. This situation requires careful consideration and is discussed below. In such cases, the caseworker should carefully consult with supervisors and a mental health professional competent in permanency planning and child psychology to assess the possible effects the move would have on the child. Ultimately, the best interests of the child will determine what permanency decision is made.

When the decision is to move the child to a pre-adoptive home, and the child is age-appropriate, the caseworker may consider working with the foster parents to create a Lifebook with the child. This process should help the child document their early years and help them understand how and why they came to be adopted. (*See Chapter 8 for more information on Lifebooks.*)

F. OTHER PERMANENCY CONSIDERATIONS

1. When a Child Does Not Wish to be Adopted

If the child does not wish to be adopted, the foster parent may want to assume legal guardianship or custody of the child. This may be an appropriate permanency plan for the child when, for example, the foster parent is a kinship foster parent and is reluctant to terminate the rights of the related birth parent. The benefits of keeping a child with relatives may outweigh the permanency of a legal adoption by non-relatives. It might also be an option when relatives do not want to be involved with foster care but do want to provide permanence for the child. Again, the standard for making such decisions is always the best interests of the child. In light of the complex issues associated with permanency in a kinship foster care context, caseworkers must make certain that the family understands that guardianship may come with limited or no supports and resources for the family.

2. Permanent Guardianship

In 2008, New York State legislation was enacted to create a new legal status of "permanent guardianship" of a child. Permanent guardianship can be established for a freed or orphaned child whose guardianship and custody rests with a Commissioner of Social

Services or a voluntary authorized agency. The court has the authority to appoint a permanent guardian for a child as an alternative to adoption; this legal status can continue after the child's 18th birthday and 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. (Chapter 404 of the Laws of 2008)



RESOURCES

For more information on permanent guardianship, see:

- *New Statutes Affecting Kinship Care: Chapters 404 and 519 of Laws of 2008*. This paper was issued as an Administrative Directive in 2009 (09-OCFS-ADM-05) and is available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/

3. Relative/Kin Placement Considerations

Relatives have historically been granted special consideration in the foster care system due to the special continuity of relationships they provide a child. Section 1017 of the Family Court Act (FCA) requires that when the court is considering the removal of a child from his or her home, the court must direct the local social services district to conduct an immediate search to locate any relatives of the child, including grandparents and any non-respondent parent, who may be willing and able to care for the child. The local district must inform the relative of the pending abuse/neglect proceeding, of the opportunity to either care for the child as a foster parent or to assume direct legal custody of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not successful. (FCA 1017)

Federal law and policy, and NYS regulations recognize and require special consideration of relatives in the child welfare system. Section 103 of The Fostering Connections to Success and Increasing Adoptions Act of 2008 states that “within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence. . . .” The notice required by the Act must specify “that the child has been or is being removed from the custody of the parent or parents of the child”; explain “the options the relative has under Federal, State and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice”; and describe “the requirements . . . to become a foster family home and the additional services and supports that are available for children placed in such a home.” [18 NYCRR 430.11 (c)(4)]

Once a child is 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. Both federal and state law recognize that, on a case-by-case basis, it is acceptable not to file a termination of parental rights petition for a child placed in kinship foster care, even when he or she has been in care for 15 of the most recent 22 months. Before the foster child is placed with

relatives, the possibility of making the placement a permanent arrangement should be explored with them. If a child is placed with non-relatives, 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. [SSL §384-b(3)(1)(i)(A) and 18 NYCRR 431.9(e)(2)(i)]

The ways in which relatives may become a permanent resource for the child include:

- adopting a related child who is free for adoption; or
- assuming legal custody or guardianship of a freed child pursuant to Article 6 of the FCA; assuming legal guardianship pursuant to Article 17 of the Surrogate's Court Procedure Act.



RESOURCES

For more information about the role of relatives in child welfare, see:

- *Having a Voice & a Choice: NYS Handbook for Relatives Raising Children*, available in English at <http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf> and in Spanish at <http://www.ocfs.state.ny.us/main/publications/Pub5080-S.pdf>

G. PERMANENCY HEARINGS AND FAMILY COURT

1. Legislation

In 2005, New York State enacted significant legislation that focused on expediting permanency for children in foster care (Chapter 3 of the Laws of 2005). Among its many provisions is a requirement for more frequent permanency hearings for abused, neglected, or voluntarily placed children in foster care, completely freed children, and children directly placed in the legal custody of relatives under Article 10 of the FCA. When the court places the child in foster care or approves the voluntary placement agreement, it must set a “date certain” for the initial permanency hearing. In addition, upon completion of the permanency hearing, the court must establish a “date certain” for the next permanency hearing. Chapter 3 of the Laws of 2005 created a new Article 10-A of the Family Court Act pertaining to all such permanency hearings. Article 10-A also includes youth who entered foster care under one of these categories who are between the ages of 18 and 21 and who consent to remain in foster care. (FCA §§1086—1090)



Note: Children who are in foster care as Persons in Need of Supervision (PINS) or juvenile delinquency (JDs) have different time frames for permanency hearings. The Family Court does not have continuing jurisdiction over these children; petitions must be filed to schedule a hearing to consider the child’s continuation in foster care.

Among the provisions of Article 10-A of the FCA relating to permanency hearings are the following requirements:

- The initial permanency hearing for a child who is not completely freed for adoption, and for children in foster care as an abused, neglected or voluntarily placed child, must begin no later than eight months after the child's removal from home.¹¹ The permanency hearing must be completed within 30 days of the scheduled date certain. (FCA §1089(a)(2))
- An initial permanency hearing for a child that is completely freed for adoption must be held immediately following an approval of a surrender or TPR disposition or no later than 30 days after the court hearing completely freeing the child. It must be completed within 30 days after it begins. (§1089(a)(1))
- Subsequent permanency hearings for both freed and non-freed children who remain in foster care must begin at least every six months thereafter on a date certain set by the court at the completion of the previous permanency hearing. The hearing must be completed within 30 days after it begins. (FCA 1089(a)(3))
- The social services district must file with the court a permanency hearing report and serve the required parties by regular mail no later than 14 days before the date certain set for the permanency hearing. The report is a sworn document that must contain specific information about the child's well-being, including health, educational progress, and current placement; visitation plans; parent status and progress; services offered to the parent and any barriers to the delivery of appropriate services; and reasonable efforts made by the district to achieve the permanency plan. Specific recommendations for changes to the permanency plan must be included. No petition is required. (FCA §§1087(e), 1089(b)&(c))



RESOURCES

- For more information about permanency law, permanency hearings, and permanency reports, see the Permanency Law section on the OCFS website, especially *A Guide for Caseworkers: Completion of the Permanency Hearing Report* at http://www.ocfs.state.ny.us/main/legal/legislation/permanency/guide_for_caseworkers-permanency_hearing_december_2005.doc

2. After the Permanency Hearing

At the conclusion of each permanency hearing, the court must determine and issue its findings, and enter an order of disposition 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

¹¹ Date of removal plus 60 days, plus six months.

child would be at risk of abuse or neglect if returned to the parent or other person legally responsible. The order can result in an order directing the local social services official to file a petition for termination of parental rights. **Thus, the court's disposition in a permanency hearing can be the initiating force in the agency in a proceeding to terminate parental rights in order to free the child for adoption.**

- 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, and whether reasonable efforts have been made to finalize the child's permanency plan. (FCA 1089)
- At the end of the hearing the court will enter one of the following orders of disposition:
 - that the child be discharged and returned to the parent or other person legally responsible, if appropriate; or
 - that the placement be extended and the child not be returned to the parent or other person legally responsible.
- When the court orders an extension of placement, the findings and order must include, among other things:
 - whether the child's permanency goal should be approved or amended and the anticipated date for achieving the goal;
 - placement of the child in the custody of a fit and willing relative or continuation of the current placement until the completion of the next permanency hearing;
 - whether reasonable efforts have been made to achieve the child's permanency plan;
 - what efforts should be made to effectuate another permanency plan if return of the child home is not likely;
 - 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 local social services official or agency to implement the educational and vocational program components of the permanency hearing report and any modifications that should be made to the plan;
 - 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 their right to have counsel or another representative with them;

- 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 local social services district or agency 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 local social services district or agency 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;
- when a child has been placed outside of this state, whether the out-of-state placement continues to be appropriate, necessary, and in the best interests of the child;
- when a child has, or will before the next permanency hearing, reach the age of 14, the services and assistance necessary to assist the child in learning independent living skills; and
- the date certain for the next permanency hearing.



Note: No placement may continue beyond the child’s 18th birthday without his or her consent and in no event past the child’s 21st birthday.

- When a child has been freed for adoption, the order:
 - may direct that the child be placed for adoption in the foster family home where they reside, or has resided, or with any other suitable person or persons;
 - may direct the local social services district to provide services or assistance to the child and the prospective adoptive parent (these must be services that are available and included in the local district’s Consolidated Annual Services Program Plan);
 - must include, when appropriate, the evaluation of eligibility for adoption subsidy but will not require the provision of such subsidy.

Order of Placement for an Abandoned Child Under the Age of One

New York State’s Family Court Act [Section 1055(b)(ii)] requires that when the court transfers the care and custody of an abandoned child under the age of one to a local social services commissioner when either of the parents do not appear after due notice, the court must include in its order of disposition specific procedures to be followed by the commissioner to expedite the freeing of the child for adoption. The order issued by the court must direct the social services commissioner to:

- promptly begin a diligent search to locate the child’s non-appearing parents or other known relatives legally responsible for the child;
- begin an abandonment proceeding to commit the guardianship and custody of the child to the authorized agency, six months from the date the care and custody was transferred by the court, if there has been no communication or visitation by the parents or other known relatives or person legally responsible for the child (*see Chapter 5, Section B, “Abandonment”*); and
- provide written notice as part of the search to the parents or known relatives legally responsible for the children to inform them:
 - that the local commissioner must initiate a proceeding to commit guardianship and custody of the child to an authorized agency and that a TPR proceeding must begin within six months from the date the child was placed in foster care, with the date specified in the notice;
 - that there has been no visitation and communication between the parent and the child since placement, and that if no visitation and communication occur within six months of the date of placement, the child will be considered an abandoned child and that a proceeding to terminate parental rights on the ground of abandonment will take place;
 - that the social services district is responsible for reuniting and reconciling families whenever possible and to offer services and assistance for that purpose;
 - of the name, telephone number, and work address of the caseworker assigned to the child who can provide information, services, and assistance with respect to reuniting the family; and
 - that it is the responsibility of the parents, relatives or other persons legally responsible to visit and communicate with the child and that such actions may avoid the necessity of initiating an abandonment proceeding. [FCA §1055(b)(iii)]

The notice must be written in plain language in both English and Spanish.



RESOURCES

For more information about locating absent parents, see:

- *Access to the Federal Parent Locator Service (FPLS), State Parent Locator Service (SPLS), and Additional Financial Information in Child Welfare Cases for the Purposes of Permanency*, issued as an Administrative Directive in 2007 (07-OCFS-ADM-09) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2007/
- *What Unwed Fathers Need to Know . . . New York State Putative Father Registry*, OCFS Publication #5040 (5/08) regarding use of the Putative Father Registry at <http://www.ocfs.state.ny.us/main/publications/pub5040.pdf>

Chapter Three

Reasonable Efforts and Documentation of Efforts

It is important that caseworkers understand the requirements related to reasonable efforts, diligence of efforts, and documentation of efforts. Timely completion of these requirements is important not only because they are legal mandates but also because the successful outcome of cases can be compromised if the requirements are not completed. Most importantly, unless there is a legally acceptable reason not to do so, families and children have a right to the services associated with reasonable efforts and diligence of efforts to help preserve their family.

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A. REASONABLE EFFORTS

Reasonable efforts is a term that describes an important component of child welfare policy and practice. Reasonable efforts refers to the level of effort that must be made by social services districts and agencies to provide the assistance and services needed to preserve and reunify families. The Family Court is required to make a determination that reasonable efforts were made by the social services district at key points in the life of a case and include that finding in written court orders.

1. When Reasonable Efforts Are Required

Federal and state law, regulations, and policy have long required that agencies make reasonable efforts to preserve and reunify families known to the child welfare system. The federal Adoption and Safe Families Act of 1997 (ASFA) and corresponding state law clarified that the child's safety is the paramount concern in determining the extent to which reasonable efforts should be made.

Reasonable efforts must be made at two distinct points in time in nearly all child welfare cases:

- 1) Reasonable efforts must be made *to prevent the removal of a child* from his or her home, unless a court makes a finding that reasonable efforts are not required. The court can make such a finding, often referred to as a *no reasonable efforts are required order*, based on certain grounds specified in the

law and discussed in Section A. 2. It is also possible for the court to make a finding that no efforts were reasonable or appropriate given the circumstances of the case.

- 2) When a child is placed in foster care and the 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.

Documenting Reasonable Efforts to Prevent Placement

Where the removal of a child from his or her home is contemplated or has already taken place, federal Title IV-E standards require a case-specific court determination within 60 days of removal whether reasonable efforts were made to prevent removal or were not required [45 CFR 1356.21(b)(1)(i)]. If the determination concerning reasonable efforts is not made as described above, the child is not eligible for Title IV-E foster care maintenance payments for the duration of the child's stay in foster care [see 45 CFR 1356.21(b)(1)(ii)].

Documenting Reasonable Efforts After Placement

Once 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 were made to enable the child to return home safely or to finalize the child's permanency plan. For Title IV-E purposes, the initial determination must be made within 12 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. Thereafter, a reasonable efforts determination must be made every 12 months.

Under New York State law, the timing of permanency hearings for children placed into foster care as juvenile delinquents and Persons in Need of Supervision (PINS) reflect the above referenced federal standards. However, for children placed into foster care under Article 10 of the Family Court Act (FCA) or voluntarily placed pursuant to SSL §384-a and for children freed for adoptions, the initial permanency hearing is held sooner and subsequent permanency hearings are held more frequently in accordance with the standards set forth in Article 10-A of the FCA.

It is from the caseworker's testimony, input from family members and service providers, and timely and thorough documentation, that the judge can obtain sufficient information to make that determination. This is one of several reasons why it is critical that the caseworker accurately document all information relevant to the case in a timely manner. This includes, but is not limited to, progress notes, periodic Family Assessment and Service Plans (FASPs) or child assessment and service plans for children freed for adoption, plan amendments for significant status changes in the case, and permanency hearing reports.

Diligent Efforts: The term *diligent efforts*, or *diligence of efforts*, is sometimes used synonymously with *reasonable efforts*, although there are differences between the two terms. “Diligence of efforts” applies to children in foster care and their families, and not to preventing out-of-home placement (as “reasonable efforts” does). *Diligent efforts* is defined under NYS law [SSL§384-b(7)(e)] as reasonable attempts by an authorized agency to assist, develop, and encourage a meaningful relationship between a parent and child.¹ This diligence of effort to reunify families when a child has been placed in foster care must occur for a local district to be able to demonstrate that the reasonable efforts requirements have been satisfied. For the purpose of a termination of parental rights proceeding on the ground of permanent neglect, diligent efforts in a case include, but are not limited to:

- consulting and cooperating with the parent(s) in developing a plan for appropriate services to the child and family;
- making suitable arrangements for the parent(s) to visit the child;
- providing services and other assistance to the parent(s); and
informing the parent(s) at appropriate intervals of the child’s progress, development, and health.²

Diligence of Efforts Checklist: Being able to confirm completion of each of the items on the checklist below should help caseworkers determine if they are making diligent efforts.³

- 1) I have consulted and cooperated with the parent(s) in developing a plan for appropriate services to the child and family.
- 2) I have made suitable arrangements for the parent(s) to visit the child.
- 3) I have provided services and other assistance to the parent(s).
- 4) I have informed the parent(s) at the appropriate intervals of the child’s progress, development, and health.
- 5) Given the specific case circumstances, do any of the exceptions to diligence of efforts standards apply? (*See Section A. 2.*)

2. When Reasonable Efforts Are *Not* Required

Although reasonable efforts to preserve and reunify families are required for almost every child welfare case, there are some exceptions. Under some very specific case circumstances, the local district may seek an order from the Family Court to obtain a finding that reasonable efforts are not required in a particular case. The local district cannot, at its sole discretion, decide that reasonable efforts are not required; the district must seek and obtain a written order from the court.

¹ Center for Development of Human Services (2008). *Journey Through Adoption Curriculum*, p. 284.

² Ibid. p. 285.

³ Ibid. p. 289.

Consistent with the provisions of ASFA, reasonable efforts to preserve or reunify the family in New York State are *not* required when the court has determined that:

- 1) **The parent has subjected the child to aggravated circumstances**, as defined by state law. (**Note:** If there is a determination of “no reasonable efforts” based on aggravated circumstances, a petition to terminate parental rights can be filed immediately using the grounds of severe or repeated abuse.)

In New York State, the definition of aggravated circumstances [*see FCA§1012(j)*] includes the following:

- The parent of the child has subjected the child to actions described in the grounds for severe and repeated abuse as those terms are defined in SSL§ 384-b(8)(a)& (b).
 - *Severe abuse* requires a finding that a parent: (1) inflicted serious physical injury to the child by reckless or intentional acts evincing a depraved indifference to human life, or (2) committed or knowingly allowed to be committed felony sex offences against the child *and* the victim was his/her child or a child for which the parent was legally responsible (**Note:** this category includes serious kinds of sexual and physical abuse, even though there has been no criminal conviction.)
 - *Repeated abuse* is also considered aggravated circumstances. Repeated abuse requires a finding that: (1) the child has been physically abused, which resulted in physical injury to the child as a result of the parent’s own acts, or (2) the child has been subjected to sexual abuse in which the behavior is part of the definition for felony sex acts and there was an abuse finding regarding the abuse of another child of the parent within the last five years, or the parent was convicted of a felony sex offense against the child, a sibling, or another child that he/she was legally responsible for, within the five preceding years.
 - *Post-placement abuse:* A child who is adjudicated as an abused child within five years of returning home from foster care following having been adjudicated as a neglected child by the same respondent.
- *Parent’s failure to plan/refusal to cooperate:* The court finds by clear and convincing evidence that a parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect should the child be returned home, and has failed to secure services on his or her own or otherwise prepare for the return home of the child and, after being warned by the court that such admission could result in the elimination of the requirement by the local district to provide services to reunite the child with the parent, the parent stated under oath that that he or she intends to continue to refuse services and is unwilling to secure such services, unless the court find adequate justification for the failure to engage in or secure such service.

- *Abandonment of a newborn left in a safe place:* The court has determined a child five days old or younger was abandoned by a parent with the intent to wholly abandon the child but with the intent that the child be safe from physically injury and cared for in an appropriate manner. For example, a newborn less than five days old is left in a safe place (e.g., emergency room, fire station). The parent's intent was to abandon the child; however, he or she made sure the child would be safe from physical harm and cared for in an appropriate manner.

2) Certain criminal convictions: The parent of a child has been convicted of any of the following:

- murder in the first or second degree and the victim was another child of the parent;
- manslaughter in the first or second degree and the victim was another child of the parent and the parent's actions were voluntary;
- attempting, soliciting, conspiring, or facilitating murder or manslaughter and the victim or intended victim was the child or another child of the parent;
- assault in the first or second degree or the crime of aggravated assault upon a person less than 11 years old and the victim was the child or another child of the parent and the victim sustained serious physical injury;
- convictions from other jurisdictions which include the same essential elements of the NYS penal sections and the victim was the child or another child of the parent.



Note: There must be a criminal conviction to use this category, whether by plea of guilty or following a trial. An arrest in and of itself is not sufficient.

3) Prior involuntary termination of parental rights to a sibling: The parental rights of the parent were involuntarily terminated in regard to a sibling or half-sibling of the child(ren) in question, unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the child with the parent in the foreseeable future.

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

3. Court Findings Regarding Reasonable Efforts

The official court forms issued by the NYS Office of Court Administration provide for the recording of reasonable efforts findings by the courts. The categories of findings that a court can record are divided as follows:

1) Reasonable efforts to prevent or eliminate the need for removal of the child(ren) from the home:

- were made as follows [(specify):]
- were not made but the lack of efforts was appropriate [(check all applicable boxes):]
 - Because of a prior judicial finding that the Petitioner was not required to make reasonable efforts to reunify the child(ren) with the Respondent(s) (specify date of finding).
 - because [(specify other reason(s):)]
- were not made.

(Source: OCA Form 10-7, Child Protective—Petition—Abuse, Severe Abuse or Repeated Abuse)

2) Reasonable efforts to make and finalize the permanency planning goal of return to parent, adoption, guardianship, permanent placement with a fit and willing relative, or placement with another planned permanent living arrangement:

- were made as follows [(specify):]
- were not made [(specify if necessary):]
- The permanency goal is to return to parent(s) and reasonable efforts were not made, but the lack of efforts was appropriate because of a prior judicial finding that the authorized agency was not required to make reasonable efforts to reunify the child(ren) with the parent(s).

(Source: OCA Form PH-5, Child Protective and Voluntary Foster Care—Permanency Hearing Order)



Note: If the court makes a finding that reasonable efforts are not required to reunify the child with his or her parent(s), the social services district will be expected to demonstrate that reasonable efforts were made to achieve another permanency planning goal.

B. DOCUMENTATION OF EFFORTS

Thorough and timely documentation of relevant information is essential in child welfare. Case records and related documentation are the official record of what has occurred in a case. They provide an historical record that will be helpful to other

caseworkers who are assigned to work with the family in the future. Case records help organize a caseworker's thinking about the work, provide accountability, and a means for supervisory review. They serve as a communication mechanism among service providers, supervisors, and administrators and are sometimes used for statistical reporting and research. Documentation facilitates decision-making, provides a clearer picture of the interactions needed for family reunification or evidence of the parents' inability or lack of desire to provide for their child.

The case record is a primary source of the evidence needed to support an effective termination of parental rights case by establishing the efforts made by the agency to preserve and reunify the family, or the reasons those efforts were not appropriate.

Accurate, complete, and timely documentation needs to be collected and maintained in all cases from the first contact with the family.

C. UTILIZATION REVIEW STANDARDS

OCFS regulations establish standards to be used by agencies in determining the appropriateness of mandated preventive services, the necessity of foster care placement, the appropriateness of the foster care placement, and the diligence of efforts necessary to secure permanency for a child in foster care and for relevant documentation (18 NYCRR Part 430). **These standards require that family relationships be sustained, whenever possible; that each child's interests for sound and permanent relationships are protected; and that appropriate services are provided to every client (18 NYCRR 430.8).** To achieve these outcomes, utilization review (UR) standards require that:

- Every family with a child at clear risk of foster care placement receives preventive services to improve the family relationships and prevent the placement.
- Only children who must be removed from their families to be provided proper care, nurturance, or treatment are placed in foster care.
- Children in foster care are placed in the least restrictive, most home-like setting possible.
- Every possible effort is undertaken to prepare each child and his or her family for the discharge of the child.

All of the documentation required by the regulatory standards set forth above must be recorded in CONNECTIONS and as specified in OCFS regulations 18 NYCRR Part 428.

1. Lack of Progress for Children with a PPG of Discharge to Parent

The regulations relevant to the UR standards identify the diligent efforts that must be made, depending upon the child's permanency plan. OCFS regulation 18 NYCRR 430.12(d) includes the requirements for a child whose permanency plan is discharge to parents, including the minimum requirements for visiting between the child and the family and documenting those efforts. If there is a lack of progress, the following sections are relevant in considering whether to file a petition to terminate parental rights:

- **Abandonment:** If the parent fails to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency, so that the child is considered abandoned (pursuant to SSL §384-b), and no mitigating circumstances exist, then an action to terminate parental rights must be initiated within 60 days of the completion of the assessment and service plan which documents these circumstances.
 - **Documentation:** Careful documentation of these circumstances in the Family Assessment and Service Plan (FASP) of the Uniform Case Record (UCR) is required as evidence of the parent's intent to forgo his or her parental rights and obligations. The progress notes must indicate the date that the petition to terminate parental rights is filed.
 - **Permanent neglect:** Permanent neglect involves the parent's failure to substantially and continuously or repeatedly maintain contact with or plan for the future of the child for a period of one year. The parent must have been physically and financially able to do so. If there are no mitigating circumstances, and in spite of the agency's diligent efforts to encourage and strengthen the parental relationship (when such efforts will not be detrimental to the child), then an action to terminate parental rights must be initiated within 60 days of the completion of the FASP that documents these circumstances.
 - **Documentation:** The FASP must document the lack of contact or the parents' failure to plan for the child, as well as the agency's attempts to encourage and strengthen the parental relationship or the reasons why such efforts would have been detrimental to the child and were therefore not made. The progress notes must indicate the date that the petition to terminate parental rights was filed.
- **Discharge Time:** Every child with a permanency planning goal of return to parents or relatives who has been in care for 15 of the most recent 22 months must be discharged from care or the local district must comply with the standards for filing a petition to terminate parental rights that are set forth in OCFS regulation 18 NYCRR 431.9 and discussed below.
 - **Documentation:** When a child has been in care for 15 of the most recent 22 months, the FASP must show that the child has been discharged from foster care or that a petition to terminate parental rights has been filed, unless the plan shows that:
 - the child is in care in the home of a relative; or
 - that services have not been provided to the family of the child, which are necessary for the safe return of the child to his or her family; or
 - there is a compelling reason why it would not be in the child's best interest to initiate a termination proceeding.

2. Children with a PPG of Discharge to Adoption

OCFS regulations establish the time frames within which milestones associated with finalizing an adoption for children with a PPG of adoption must be achieved. These milestones include legally freeing the child, placement in an adoptive home, and legal finalization of the adoption. Although practice in the majority of counties in NYS is to change the child's PPG to adoption before legally freeing the child, in some counties the practice is to only change the child's PPG to adoption at the time the child is legally free. In addition, some judges will not legally free a child unless there is an identified prospective adoptive parent. [18 NYCRR 430.12(e)]

- **Children Not Legally Free:** 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 PPG of adoption. The child must be freed within 12 months after the establishment of the PPG of adoption.
 - **Documentation:** The progress notes must indicate when the action to legally free the child was initiated. Copies of the petition and any documents submitted in support of the petition or descriptions of the content of the documents must be kept in the case record. In addition, the date that the child was freed must be noted in the progress notes.
 - If the case does not meet the standard for freeing the child within 12 months, the district will be considered to be out-of-compliance with the standard unless, at the time of the first recertification after the 12-month period, the FASP shows that a petition to terminate parental rights was filed within 120 days of the date the PPG of adoption was chosen, and the delay was caused solely by the court and not by the district or agency caring for the child, or that the court refuses to terminate parental rights.

3. Children Legally Free But Not in An Adoptive Home:

Most children who are legally free for adoption, but not in an adoptive home, must be placed in an adoptive home within six months after the child is freed for adoption. There are exceptions for children who are legally free for adoption but placed in facilities operated or supervised by the NYS Office of Mental Health (OMH) or the NYS Office of Mental Retardation and Developmental Disabilities (OMRDD). During the time the child is in a facility operated or supervised by OMH or OMRDD, the LDSS is considered to be in compliance with this standard during the time the child remains in the facility. If the child is discharged from the facility to a foster care placement, the time in the facility when the child was legally free is considered to be part of the total time the child is legally free but not in an adoptive home and the documentation requirements specified below will apply.

Native American children who are legally free for adoption must be placed in adoptive homes in accordance with the specific order of preference specified by law and regulations [(18 NYCRR 431.18(g))]. The placement of Native American children for adoption, including the required order of preference for placement, is discussed in Chapter 11.

- **Documentation:** The progress notes must indicate when the child was placed in the adoptive home or the fact that the child was not placed in the adoptive home within the required time frame.
 - If a handicapped or hard-to-place child was not placed in an adoptive home within six months, the progress notes must indicate that an inquiry was made of the adoptive placement registry within three months of the date the child became legally free and the results of the inquiry.
 - There are additional requirements regarding the placement of handicapped and hard-to-place children into adoptive homes that are discussed in detail in Chapter 8.
 - In regard to the placement of Native American child in an adoptive home, there must be documentation in the case record of the efforts made by the LDSS to comply with the order of placement preference. This documentation must be made available to the child's Tribe and the Secretary of Interior upon request.

4. Children Legally Free, in an Adoptive Home, but Whose Adoptions are Not Yet Final

Adoptions for these children must be finalized within 12 months after the child is placed in an adoptive home.

- **Documentation:** The progress notes must indicate the date of finalization. If the child's adoption was not finalized in the required time frame, the social services district is considered out of compliance unless there is timely documentation that the delay was caused solely by the court or that the adoptive parents have delayed finalization.

D. CASE MANAGEMENT AND CASE PLANNING

All child welfare cases 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.

1. Case Manager

OCFS regulations define the case manager as the employee of the social services district who is responsible for authorizing the provision of services; approving the client eligibility determination; and approving the FASPs by signature or electronic equivalent. [18 NYCRR 428.2] Sometimes, however, the case manager is an employee of a contract

not-for-profit agency rather than the local district. These are instances in which a social services district has applied to OCFS to operate a managed care system or “other alternative system” for family and children’s services, as allowed by SSL §153-k(4). The law provides a broad framework within which local districts can develop such systems, and it allows the districts, based on a plan approved by OCFS and the NYS Division of the Budget, to delegate case management.

At this time, there is one such approved plan in New York State, known as Improved Outcomes for Children (IOC) being operated by the New York City Administration for Children’s Services (ACS). ACS announced its intention to implement IOC in early 2007 and, with their plan approved, phased in the IOC program city-wide. Among its many components, IOC includes the delegation of case management to the contract nonprofit agencies that have contracts with ACS to provide preventive services and foster care. Other key components of IOC include family team conferencing, targeted technical assistance by ACS to provider agencies, and performance monitoring and measurement.

IOC is the service model for children in the custody of the ACS Commissioner as well as families receiving preventive services from private agencies that contract with ACS. Given the size of New York City, this represents well over half of the child welfare system in the state. Additional information about IOC may be obtained on the ACS website at www.nyc.gov/html/acs. ACS retains certain functions such as the final determination of eligibility for foster care and preventive services.

The responsibility for determining eligibility (except for IOC) and approving and authorizing the provision of services on a case-by-case basis rests with the case manager. These responsibilities include:

- developing clear plans for services for the purpose of achieving an identified service goal;
- reviewing service provision from the beginning of placement to assess the quality and appropriateness of services provided;
- collaborating with, or delineating the roles of, service providers involved with a family; and
- evaluating the parent-child relationship, at least every six months, to determine what actions will serve the best interests of the child.

2. Case Planner

The case planner, who may be employed by either the social services district or a private agency, is the caseworker with the primary responsibility for providing, coordinating, and evaluating the provision of services to the family. Case planning responsibilities include, but are not limited to, the following:

- referring the child and his or her family to providers of services as needed and delineating the roles of the various service providers;

- facilitating collaboration among all the caseworkers assigned to the case so that a single FASP is developed;
- documenting client progress and adherence to the service plan by recording in the case record that such services are provided; and
- making caseworker contacts or arranging for casework contacts. [NYCRR 18 428.2(c)]

E. THE UNIFORM CASE RECORD

Social Services Law and OCFS regulations mandate that social services districts maintain a single uniform case record for each family under the following circumstances [18 NYCRR 428.1(a)]:

- Children are placed in the custody of the social services district, or considered for placement, which includes all children placed by a court directly in the legal custody of a relative or other suitable person pursuant to Article 10 (child abuse and neglect proceedings) of the Family Court Act.
- Children are in receipt of mandated and non-mandated preventive services.
- Children are legally freed for adoption.
- Children are named in an indicated report of child abuse or maltreatment.

The uniform case record is currently incorporated into the electronic CONNECTIONS system as an online case record (18 NYCRR 466.3) The case record must include all assessments and service plans, progress notes, an account of all family and children's services delivered to the child and/or family, as well as documentation of judicial and administrative proceedings related to the child and his/her family. [SSL §409-f; 18 NYCRR Part 428].

OCFS regulations specify that the case record must: [18 NYCRR 428.1 (b)]

- contain information that is relevant, useful, factual, and objective;
- contribute to the district's understanding of a child's or family's need for involvement in the child welfare system;
- contain family assessments, including safety assessments and evaluation of the risk of future abuse and maltreatment in child protective cases. In addition, assessments of the problems, strengths, and needs of the child and the family receiving or applying for family and children's services must be documented. These documented assessments promote valid decision-making and planning, and support major decisions affecting the safety, permanency, and well-being of children by careful, comprehensive, and timely reviews and evaluations of all relevant material;
- contain service goals or desired outcomes for each child and/or parent who receives one or more direct family and children's services from the district, or

for whom the district purchases such services; and, for each child in foster care, the child's permanency planning goals; and

- demonstrate compliance with OCFS's standards for family and children's services.

OCFS regulations establish standards for maintaining the case record, which are described in detail in the Appendix. These standards include timeliness, completeness, organization, details, and objectivity. Also discussed in the Appendix are the regulatory requirements for the content of the case record.

1. Case Initiation Date

Each case record must include a case initiation date (CID), which is considered day one of the case. CID is used to calculate key milestone dates throughout the life of the case, including but not limited to, the dates by which FASPs must be completed and service plan reviews conducted.

OCFS regulation 18 NYCRR 428.2(a) defines CID as the earliest of the following events:

- the initial date of application for foster care services, mandated or non-mandated preventive services, or adoption services;
- the date that a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) is determined to be indicated;
- the date of placement of a child in foster care pursuant to Article 3 (juvenile delinquency) or Article 7 (Persons in Need of Supervision, or PINS) of the FCA, or the date of removal of a child from his or her home pursuant to Article 10 (child abuse and neglect) of the FCA or section 383-c, 384 or 384-a of the SSL, or placement by the court in the direct custody of a relative or other suitable person pursuant to Article 10 of the FCA; or
- the date of court-ordered preventive services or commitment of care, custody, and/or guardianship of a child to a local social services district commissioner for placement with an authorized agency or foster parent.

2. Importance of Case Records in Termination Cases

Carefully prepared documentation often is invaluable in efforts to free a child for adoption since the case record is the foundation of the agency's termination case. For a child who has been in foster care for a number of years and has had several caseworkers, the caseworkers' documentation offers the most complete and chronologically accurate account of a child's stay in foster care, the involvement or lack of involvement of the parents and extended family with the child and agency, and efforts made by the agency to reunite the child with his or her family.

In addition, the case record provides information that supports specific grounds for termination. For example, in relation to termination on the basis of permanent neglect, the case record must document the agency's diligent efforts to provide services and help

parents plan for the return of their child. In relation to an abandonment case, the case record should demonstrate that the agency did not discourage parental visitation. In a severe or repeated abuse proceeding, the case record should document that the agency has made diligent efforts to encourage and strengthen the parental relationship or that it would be detrimental to the best interests of the child to do so. If the court made a finding that reasonable efforts are not required based on standards set forth in statute, the petitioner does not have to demonstrate diligent efforts. The agency would have to produce the court order with such a finding. For a termination proceeding based on the grounds of mental illness or mental retardation, the case record should include the names of professionals who have evaluated the parent(s) and could be contacted to provide the testimony necessary in court to prove these grounds.

Lack of Documentation of Diligent Efforts

If the caseworker has not worked diligently and conscientiously to reunite the family, his or her lack of diligent efforts will be evident in the case record. The following indications of a lack of diligent effort by the caseworker could seriously weaken the agency's case for termination of parental rights when diligent efforts is an element in the case:

- characterizations that are unsubstantiated by facts—conclusions, especially negative ones that are not supported by hard facts—possibly indicating that the caseworker, either actively or passively, failed to use sufficient efforts to aid the family;
- evidence of a failure to involve the parents in planning for the child's future, including the failure to invite the parents to service plan reviews and/or providing the parents with a copy of the service plan and visiting plan;
- evidence that the case was not assigned to a caseworker for a substantial period of time, preventing timely case record entries and interrupting service efforts by the agency;
- failure to remove a child from the foster home despite serious questions about the competence of the foster parents. In the case of foster parents who wish to adopt the child, such questions could undermine the agency's decision to have the child adopted by the foster parents and would give others the opportunity to raise doubts about whether adoption is in the best interests of the child.

F. FAMILY ASSESSMENT AND SERVICE PLANS

Key components of child welfare practice include assessment and service planning. This work is always done with ongoing input from children and families, whenever possible, as well as all involved service providers. The documentation of this work is done on the Family Assessment and Service Plan (FASP) within specific time frames required by OCFS regulations. The three types of periodic FASPs are listed below, as well as the related Plan Amendment for key status changes. A brief summary of the information required to be included in each FASP and the associated time frames is included below as well.

1) Initial Family Assessment and Service Plan

The initial FASP is used to record the family's history and presenting problems, as well as their current level of functioning. It includes documentation of safety and risk assessments, as appropriate, and includes the service plan developed to meet the family's needs. Also included are the program choice, the child's permanency planning goal and plan for the child, and, for children placed in foster care, documentation of reasonable efforts to prevent removal or eliminate the need for placement. [18 NYCRR 428.6]

For preventive and foster care cases, the initial FASP must be completed and approved by the case manager within 30 days of the CID. However, if the case is an indicated child protective case open for protective services, the initial FASP must be completed and approved by the case manager within seven days of the date that the report is indicated. [18 NYCRR 428.3(f)(4)]

2) Comprehensive Family Assessment and Service Plan

The comprehensive FASP brings together information gathered after the completion of the initial FASP. It records an updated and more detailed assessment of the family and provides for review of the previous service plan and an update to the service plan, as necessary. It is due 90 days from the CID. [18 NYCRR 428.3(f)(5); 18 NYCRR 428.6]

The FASP includes a number of areas to record the information regarding reasonable efforts. The primary areas include:

- the service plan, and the re-evaluation of the previous service plan, including the level of outcome achievement and modifications made due to insufficient progress;
- the permanency progress section in foster care issues; and
- the visiting plan and visiting plan evaluation in foster care cases.



Note: The permanency progress section is customized as to whether the child is or is not legally freed for adoption so that permanency options for both groups of children are addressed. Both barriers to achieving permanency and actions to achieve permanency must be addressed.

3) Family Reassessment and Service Plan Review

The first reassessment FASP provides for reassessment of family functioning. It is also for the purpose of reviewing progress and revising the service plan in order to continue to meet the needs of the child and his or her family. [18 NYCRR 428.6]

The first reassessment and service plan must be completed 210 days from the CID. Subsequent reassessment and service plan reviews are due at six-month intervals thereafter. [18 NYCRR 428.3(f)(6)]

4) Plan Amendments (Status Changes)

A plan amendment describes and documents significant changes and directs a reassessment of the family's situation if any revision to the service plan is necessary. Of particular note for adoption cases is the requirement to complete a Plan Amendment for a child who becomes legally free for adoption or is discharged from foster care because of a finalized adoption.

For preventive services or foster care status changes, a Plan Amendment in most cases is to be completed and approved by the case manager within 30 days of the date the change occurred. The exceptions are set forth in 18 NYCRR 428.7(c) & (d). For protective services changes, it must be completed and approved by the case manager within seven days of the status change. [18 NYCRR 428.3(f)(7); 18 NYCRR 428.7]

G. PERMANENCY HEARING REPORTS

The permanency legislation passed in NYS in 2005 (Chapter 3 of the Laws of 2005) requires the Family Court to set a date certain (a specific day set by the court) for each permanency hearing for certain categories of children who have been removed from their home. It also eliminates the need for local districts to file petitions to calendar permanency hearings or extensions of placement hearings for these categories of children, as was required in the past.

This legislation also created a new Article 10-A of the FCA, that sets forth the standards and requirements for permanency hearings and permanency hearing reports. Social services districts are required to create a permanency hearing report prior to each permanency hearing to provide the court and the parties to the proceeding with current, complete, and accurate information about the status of the case.

Permanency Hearings must be conducted—and Permanency Hearing Reports completed and distributed—in accordance with Article 10-A of the FCA for cases involving the following circumstances:

- children who entered foster care as abused or neglected children (FCA Article 10);
- children who entered foster care through a voluntary placement agreement (SSL 384-a);
- children who entered foster care through a surrender of guardianship and custody (SSL 384);
- foster children determined by a court to be completely legally free for adoption through a surrender, termination of parental rights, or death of the parent(s), whether in foster care pursuant to FCA Articles 3 (JD), 7 (PINS) or 10 (abused/neglected), or by voluntary placement or surrender;
- children placed by the court directly in the legal custody of a relative or other suitable person in accordance with FCA Article 10; and

- children noted above between the ages of 18 and 21 who consent to remain in foster care.



Note #1: While Chapter 3 of the Laws of 2005 does not expressly refer to Unaccompanied Refugee Minors, OCFS's position is that the standards relating to permanency hearings *do* apply to such children. (08-OCFS-ADM-01)

Note #2: Chapter 3 of the Laws of 2005 (Article 10-A of the FCA) does not apply to permanency hearings for JDs or PINS in foster care who are not completely freed for adoption.

1. Types of Permanency Hearing Reports

OCFS and the NYS Office of Court Administration (OCA) created a form for the permanency hearing report (PHR), which is supported in CONNECTIONS and on the OCFS and OCA websites. There are actually three different types of permanency hearing report forms, or templates, and the caseworker(s) completing the report selects the most appropriate form, depending on the case circumstances. The three types of permanency hearing reports forms are:

- Individual child report (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)

The PHR for Individual Child (PH-1) is used for a child who is not completely free for adoption when:

- a child is “partially free” and another child in the family is not free for adoption;
- any of the Multiple Children Report conditions are not met; or
- whenever it is equally or more convenient for the caseworker, or the Court has directed an Individual Child Permanency Hearing Report be used.

The Permanency Hearing Report for Multiple Children (PH-2) is used when:

- all children in the same family are scheduled to have a Permanency Hearing at the same time; and the children have at least one parent in common (but if any confidentiality concerns among parent recipients exist, use the Individual Report); and
- the children are placed together; if placed apart, again consider confidentiality.

The PHR for Freed for Adoption Individual Child (PH-3) is used for:

- each child completely legally free for adoption.

Contents of the permanency hearing report include:

- the child's current permanency goal;
- a description of the child's health and well-being;
- information on the child's current placement;
- an update on the child's educational progress;
- steps taken by LDSS to enable or continue the child's enrollment in an appropriate school or educational program;
- information about referrals and the child's involvement in early intervention, preschool, special education, or services for developmental disabilities;
- assistance towards helping the child become gainfully employed or enrolled in vocational training;
- visitation plan description, including persons with whom the child visits and frequency and duration of the visits;
- parent's status, including services offered to enable the child to return home, steps parents have taken to use those services, barriers to services, and steps taken by parent(s) to achieve the permanency plan;
- a description of reasonable efforts taken by LDSS or other agencies to eliminate the need for placement and enable the child to return home safely, including descriptions of any services provided;
- where the permanency plan is not reunification, reasonable efforts taken to make and finalize an alternative permanency plan (when adoption is the permanency plan, this may include preparation of the children, preparation of the foster families adopting, recruitment activities, and post-adoption services identified and plans to put into place);
- recommended permanency plan, including any concurrent planning efforts to develop an alternative permanency plan for children unlikely to return home;
- information on trial or final discharge planned within the next six months, the anticipated date, and the explanation why the discharge is safe and appropriate;
- information about efforts to locate and investigate the non-respondent parent and relatives, as well as their notification of pending child welfare/child protective proceedings;
- information provided to non-respondent parent and relatives about their right to visitation;

The permanency hearing report must also be accompanied by additional reports and documents as directed by the court, which may include periodic school report cards, photographs of the child, clinical evaluations, and previous court orders in related proceedings.

2. Completing Permanency Hearing Reports

The permanency hearing report forms are integrated into the CONNECTIONS system and are available as Word templates at <http://ocfs.state.ny.us/main/legal/legislation/permanency/caseworkerguide.asp>.

A permanency hearing report can be initiated in CONNECTIONS by any worker with a role in the case, as recorded in the CONNECTIONS system. Protocols differ across local districts and their contract agencies as to who is responsible for initiating and completing the PHR. The CONNECTIONS system allows, but in no way enforces, that multiple people with roles in the case may work on the same permanency hearing report document. The person initiating the permanency hearing report selects whether or not to have the CONNECTIONS system pre-fill information from the system into the PHR. When information is pre-filled, it must be carefully checked for accuracy and edited to make sure it is the most current information available.

The Permanency Hearing Report is a sworn report. This requires a verification by the caseworker who has prepared the report or the case manager who has read the report and can attest to the truthfulness and completeness of the report sworn before a Notary or Commissioner of Deeds, before being filed with the court or mailed.

3. Distribution of the Permanency Hearing Report

The local district is required to distribute the completed permanency hearing report at least 14 days prior to each permanency hearing date certain to a list of required parties. Meeting this deadline is important not only to be in compliance with the law but also to allow the recipients of the permanency hearing report time to review the report and be better prepared for the permanency hearing. Included with the report must be a Notice of Permanency Hearing with the date, time, and location of the permanency hearing. The permanency hearing report, accompanied by the Notice of Permanency Hearing, can be mailed via regular U.S. mail to the required parties.

The permanency hearing report, along with a Notice of the Permanency Hearing, must be sent to the following required parties:

- the child's parent, including any non-respondent parent (unless parental rights have been terminated or surrendered);
- any other person legally responsible for the child's care;
- the foster parent in whose home the child currently resides;
- the attorney for the child (formerly called "law guardian");
- the attorney for the respondent parent;
- the agency supervising the child's care;

- any pre-adoptive parent; and
- any relative providing care for the child.

Any former foster parents with whom the child lived for 12 continuous months must be provided only with the Notice of the Permanency Hearing (and not the PHR). However, the court may dispense with notification of a former foster parent when the court determines it is in the best interests of the child.



Note: Court rules governing notice of the permanency hearing and transmittal of the permanency hearing report state that, *except where* a child is completely freed for adoption, in addition to sending the permanency hearing report through the mail as noted above, the social services district (the petitioner) must make reasonable efforts to provide actual notice of the permanency hearing to the respondent parents through any additional means, including, but not limited to, casework service and visiting contacts. (22 NYCRR 205.17)

The social services district must also file the original sworn PHR with the court before the date certain. It is suggested that the filing be done at the time the PHR and Notice are mailed to the parties. Another form—the “Statement to the Court of Permanency Hearing Report and Notice Sent” (“Statement”), must accompany the PHR filed with the court. The Statement contains the names and addresses of those persons to whom the local district sent the PHR and/or Notice of the Permanency Hearing and which child or children they are associated with. The Statement is sent only to the court and *must not* accompany the PHR mailed to any other person, party or entity. These documents are included in and supported by the CONNECTIONS system.



RESOURCES

For more information about permanency hearing reports, see:

- *Changes Associated with CONNECTIONS Build 18.9: Health, Education and Permanency Hearing Report Modules*, issued as an Administrative Directive in 2008 (08-OCFS-ADM-01) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/
- *A Guide for Caseworkers: Completion of the Permanency Hearing Report* (December 2005). This publication is available on the OCFS website at http://www.ocfs.state.ny.us/main/legal/legislation/permanency/guide_for_caseworkers-permanency_hearing_december_2005.doc

Chapter Four

Freeing the Child for Adoption Through a Surrender

When reasonable efforts to safely reunite a child with his or her family are unsuccessful, or there is a court order affirming that no reasonable efforts are needed in the case, and the decision has been made to secure another permanent home for the child through adoption, the first step is to initiate procedures to legally free the child for adoption.

The first avenue to consider is whether a voluntary surrender of the child by the parents is appropriate. Before initiating proceedings to terminate parental rights, the agency should discuss the possibility of voluntary surrender with the parents, if appropriate and consistent with the health and safety of the child. (SSL 383-c)

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A. SURRENDER: DEFINITION AND TYPES

1. What is a Surrender?

A surrender is the voluntary relinquishment or transfer of guardianship and custody of a child by the parent(s) 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 transfers guardianship and custody of the child to an authorized agency. The parent who signs the surrender no longer has consent to, or veto over, the child's adoption.

In the case of a child in foster care, the child is surrendered to the commissioner of a social services district, who, by virtue of being granted custody and guardianship, is empowered to consent to adoption. The social services district may provide physical care of the child and adoption services directly, or the commissioner may transfer physical care of the child to a voluntary agency authorized to provide adoption services.

When responsibility for the care of the child is transferred from the social services commissioner to a private agency, legal custody of the child remains with the social services commissioner. The frequency with which a transfer of physical care of the child from the social service district to a private agency varies significantly across the state.

If a parent or guardian of a child in foster care asks to surrender a child, the social services official must determine, after appropriate consultation, if the best interests of the child will be served by a surrender, without regard to the likelihood of placing the child in an adoptive home. If the official determines that the surrender is in the best interests of the child, the agency must make arrangements for either a judicial or extra-judicial surrender of the guardianship and custody of the child to the agency. [18 NYCRR 421.6(a)] If a voluntary surrender is not possible or appropriate, then termination of parental rights should be sought through the courts.

A child who is not in foster care can be surrendered and admitted into foster care through a voluntary surrender agreement (different than a voluntary placement agreement under SSL§384-a) that transfers guardianship and custody by the parent or guardian to the commissioner of a social services district (*see Section F*). (SSL§ 384)

The law provides that voluntary authorized agencies (private, not-for-profit agencies) may directly accept the surrender of a child at their discretion. If the voluntary authorized agency accepts a surrender of a child, the child is not considered to be in foster care or publicly funded because the social services district does not have legal custody or guardianship of the child [18 NYCRR 421.6(g)]. Rather, the child is in the guardianship and care of the voluntary authorized agency and that agency is responsible for the care and permanency planning for the child. The social services district is not obligated to provide support, care, or services, although the district may agree to do so.

2. Types of Surrenders

The caseworker, in close consultation with the supervisor and the agency attorney, must first decide which type of surrender should be used for a particular case, based on the specific case circumstances. There are two sections of the Social Services Law that define the two types of surrenders, which are:

- Section 383-c: This type of surrender applies to children who are in foster care at the time of the surrender.
- Section 384: This type of surrender applies to children who are *not* in foster care at the time of the surrender.

Next, the caseworker, again in consultation with the supervisor and the agency attorney, must decide whether to seek a judicial or extra-judicial surrender. Each of these types of surrenders is described briefly, and in more detail later in this chapter. It is important for caseworkers to consult with their supervisor and the agency attorney about how surrenders are handled by their agency and courts and, in particular, the circumstances under which extra-judicial surrenders are used.

- A judicial surrender is a surrender that is executed before a judge of the Family Court or Surrogate's Court.
- An extra-judicial surrender is a surrender signed by the parent, in the presence of at least two witnesses, and before a notary public or other officer authorized to "take proof of deeds," but not before a judge.

383-c Surrender

The surrender of a child in foster care (383-c) may be either a judicial or extra-judicial surrender.

- **383-c Judicial surrender:** This surrender 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 in Family Court. In this case, the surrender must be executed in the Family Court where the Article 10 or 10-A proceeding took place and the court should assign the case to the same judge, where practical.
- **383-c Extra-judicial surrender:** A surrender of a child in foster care may be signed in the presence of at least two witnesses and a notary public. The requirements for the witnesses, as well as the appropriate court in which the surrender may be reviewed, are discussed in more detail later in this chapter.

384 Surrender

This surrender may be either a judicial or extra-judicial surrender.

- **384 Judicial surrender:** May be executed before any judge or surrogate having jurisdiction over adoption proceedings, unless the child is being surrendered in connection with an Article 10 proceeding in Family Court. In this case, the surrender must be executed in the Family Court that had jurisdiction over the Article 10 proceeding, and with the judge who last presided over the proceeding, when practical.
- **Extra-judicial surrender:** Must be signed in the presence of one or more witnesses and before a notary public and recorded in the county clerk's office. The agency must petition the Family Court or Surrogate's Court to approve an extra-judicial surrender. If the child is being surrendered in connection with an Article 10 or 10-A proceeding, the agency must petition the court in which that proceeding took place and, where practical, the surrender proceeding must be assigned to the same judge who heard the earlier proceeding.

Upon acceptance of a judicial surrender or approval of an extra-judicial surrender, the court must schedule an initial freed child permanency hearing.

3. Required Surrender Forms

The required OCFS forms used for the surrender of a child in foster care (SSL§383-c) are available in both Spanish and English at:

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

Caseworkers select the most appropriate form from the following four, depending on the case circumstances:

- DSS-4315 (Rev. 7/02) "JUDICIAL SURRENDER" is the form that must be used in the judicial surrender of a child in foster care.
- DSS-4315-S (Rev. 7/02) "DOCUMENTO DE ENTREGA JUDICIAL" is the Spanish version of the judicial surrender form.

- DSS-4316 (Rev. 7/02) “EXTRA-JUDICIAL SURRENDER” is the form that must be used in the extra-judicial surrender of a child in foster care.
- DSS-4316-S (Rev. 7/02) “DOCUMENTO DE ENTREGA EXTRA JUDICIAL” is the Spanish version of the extra-judicial surrender form.

The surrender instrument used for a 383-c surrender must include, in plain language and in conspicuous bold print on the first page:

- that before signing the surrender, the parent has the right: to speak to a lawyer and any other person; to have that lawyer and any other person present with her or him at the time of the signing of the surrender; to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one; and to have supportive counseling;
- that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms and the terms are written in the surrender, or, if the parent registers with the adoption information register that the parent may be contacted at any time after the child reaches the age of 18, but only if both the parent and the adult child so choose;
- that the child will be adopted without the parent’s consent and without further notice to the parent, and will be adopted by any person that the agency chooses, unless the surrender paper contains the name of the person or persons who will be adopting the child;
- that the parent cannot be forced to sign the surrender paper, and cannot be punished if he or she does not sign the paper; and would not be subject to any penalty for refusing to sign the surrender; and
- that the surrender becomes final and irrevocable immediately upon execution, and that the parent cannot bring a case in court to revoke the surrender or to regain custody of the child.
- If the parties have agreed to a conditional surrender, section 383-c of the SSL specifies the requirements for the content of the surrender instrument. If a conditional surrender is appropriate for a case, the caseworker should refer to that section of the law regarding specific requirements and work closely with his or her supervisor and agency attorney.

Note: There is no required SSL§384 judicial or extra-judicial surrender form.

B. PROVISIONS COMMON TO BOTH JUDICIAL AND EXTRA-JUDICIAL SURRENDERS

1. Who May Execute (Sign) a Surrender?

SSL authorizes the following people to sign the 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 immediately preceding period of six months.
 - For a child in foster care, abandonment must be in accordance with the abandonment provisions that apply to termination of parental rights proceedings as set forth in section 384-b of the SSL (*see Chapter 5*).
- The mother, if the child was born out-of-wedlock, and the out-of-wedlock father, if his consent would be required for the child's adoption pursuant to section 111 of the Domestic Relations Law (DRL) (*see Chapter 7 for a discussion of the rights of out-of-wedlock fathers under NYS law*).
- 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. (The statute does not expressly address the rights of the father of the child born out of wedlock when the mother is deceased and a guardian has been appointed. In any case, the putative father's rights regarding consent and notice to the adoption must be considered. (*See Chapter 7 for more information.*) [SSL §§383-c(1) and 384(1)]
- The child's permanent guardian, as authorized in Chapter 404 of the Laws of 2008.

When only one parent is willing to surrender: If both parents are known but only one is willing to surrender the child, and the permanency goal is adoption, the surrender should be executed with that parent. In the case of a parent who is unwilling to surrender, determinations must be made as to whether that parent's agreement to a surrender is needed, whether there is a possibility that the parent will sign a surrender in the near future, or whether there are grounds on which that parent's rights can and should be terminated.

As noted above, state law provides that it is not necessary to obtain the signature of a parent whom the agency can prove has abandoned the child for the preceding six months. However, the caseworker should consider the surrender incomplete until attempts have been made to contact the absent parent and obtain a surrender of the child from the parent, provided that such attempts would not unduly delay the adoption process. If successful, these efforts will avoid the need to initiate court proceedings to terminate the rights of an abandoning parent, and avoid future claims on the child by such parent.

2. Voluntary and Informed Consent

It is absolutely essential that the parent sign the surrender instrument voluntarily, with a complete understanding of the consequences of his or her action. The parent cannot be forced to sign the surrender paper, cannot be punished if he or she does not sign the surrender, and cannot be subject to any penalty for refusing to sign the surrender.

No parent should be allowed to sign the surrender instrument unless he or 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 may be a future basis for a challenge to the

validity of the surrender. For this reason, some agencies may be reluctant to use extra-judicial surrenders.

In discussions with the parent(s), the caseworker should spend a sufficient amount of time to make sure that the parent's consent is fully informed. Effective counseling can result in parent(s) coming to the realization that the most responsible thing they can do for their child is to surrender their rights and free the child for adoption. On the other hand, a parent may decide that they are not willing to sign the surrender, and that decision must be respected. The agency then needs to consider filing a petition to terminate parental rights. It is important for the agency to maintain timely and complete records of the counseling provided to the parent.

3. Language Barrier

If the agency has reason to believe that, because of a language barrier, a parent may not fully understand the surrender instrument or any of their rights as the surrendering parent(s), the agency must fully explain these matters to the surrendering parent(s) or guardian(s) in their principal language. With regard to the surrender of a child in foster care or when the parent is also a foster child and the parent's principal language is Spanish, the Spanish version of the SSL §383-c surrender form should be used.

In an extra-judicial §383-c surrender, it is the responsibility of the agency employee who is designated as one of the two required witnesses to make certain that the surrender instrument is read in full to the parent(s) or guardian(s) in their principal language and that the parent(s) or guardian(s) are given the opportunity to ask questions concerning the surrender and to have those questions answered. The agency accepting a SSL §384 surrender has a similar responsibility. In all situations, the agency needs to make certain that the parent(s) or guardian(s) fully understand the purpose and consequences of signing the surrender.

4. Religious Preference

The caseworker must inform parent(s) surrendering a child that the child will be placed for adoption with parents of the same religious faith as that of the child when feasible. Agencies must comply with the parent's wishes if they are consistent with the best interests of the child and if feasible. [SSL §373, 18 NYCRR 421.6(1)] The caseworker must obtain from the surrendering person a statement of religious preference for placement of the child on form LDSS-3416. This form is available at <http://www.ocfs.state.ny.us/main/Forms/cwcs/ropi/LDSS-3416%20Religious%20Designation%20of%20a%20Child.pdf>

(See Chapter 7, section A.2, for more information.)

5. Adoption Information Registry Birth Parent Registration

The New York State Department of Health (DOH) maintains the Adoption Information Registry. Through the registry, a person age 18 and over born and adopted in New York State, the birth parent(s), and the adult biological sibling(s) of an adult adoptee can register to receive non-identifying information or, with corresponding registration and mutual consents from the parties, can exchange identifying information.

As a result of legislation in 2008, two significant changes were made to the Adoption Information Registry. Birth parents are now allowed to register with the registry at any time, rather than having to wait until the adopted child turned age 18, as was previously the case. The law also requires that caseworkers provide a form to birth parent(s) when taking a surrender from them. The form, titled *Adoption Information Registry Birth Parent Registration Form (DOH-4455)*, must be completed by the birth parent when signing the surrender. The birth parent indicates on the form their agreement or non-agreement to the release of their name and address by the Adoption Registry to the adopted child when the child reaches at least 18 years of age and voluntarily registers with the registry. The form is revocable by either birth parent at any time. The birth parent(s)' decision not to complete the form has no effect on the finality of the adoption. This form is available on DOH's Adoption Information Registry website at: www.health.state.ny.us/vital_records/adoption.htm.

In completing the form, the birth parent(s) surrendering the child state whether they give consent for the child to receive identifying information about the birth parent(s) if the child, after reaching age 18, chooses to register with the Adoption Information Registry to receive such information. As stated above, the Adoption Information Registry allows the following persons to register to receive information about one another:

- adults, ages 18 and older, who were born and adopted in NYS;
- birth parent(s) of an adult adoptee; and
- the adult biological sibling(s) of an adult adoptee.

These persons may register to receive non-identifying information about one another or, with mutual consent from the parties, can exchange identifying information. Three kinds of information are available: non-identifying, identifying, and medical.

- **Non-identifying Information:** The adoptee and the biological sibling of an adopted person can get non-identifying information about their birth parents even if they do not register with the registry or consent to sharing. This includes their general appearance, religion, ethnicity, race, education, occupation, etc; the name of the agency that arranged the adoption, and the facts and circumstances relating to the nature and cause of the adoption.
- **Identifying Information:** If all are registered and all have given their final consents, adoptees and their birth parents or adoptees and their biological siblings can share their current names and addresses. If only one parent signed the surrender agreement or consented to the adoption, then the registration of the other parent is not needed for the exchange of identifying information between the adoptee and the registered birth parent.
- **Medical Information:** Birth parents can give medical and psychological information to the registry any time after the adoption. If the adoptee is already registered, the information will be shared with him or her. If the adoptee is not registered, the information will be kept until the adoptee registers. The information is important to adoptees because it can indicate if they have a higher risk of some diseases. Medical information updates must be certified by a licensed health care provider.



RESOURCES

For more information about the Adoption Information Registry, see:

- *2008 Statutory Amendments Concerning Surrenders and the Provision of an Adoption Information Registry Birth Parent Registration Consent Form and the Impact of the Death of a Prospective Adoptive Parent Before the Completion of the Adoption*, issued as an Informational Letter in 2008 (08-OCFS-INF-12) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/
- *NYS DOH Adoption Information Registry* website at www.health.state.ny.us/vital_records/adoption

C. CONDITIONAL SURRENDERS

The law provides that the surrender instrument may include terms and conditions that are mutually agreed upon between the parent and the agency. Of course, in determining whether to accept a particular term or condition, the best interests of the child must always be considered. Referred to as *conditional surrenders*, these generally involve a parent's wishes for continued contact with a child, adoption by a particular individual, or other conditions related to the child's adoption. Terms and conditions can be added to both judicial and extra-judicial surrenders.

1. Benefits of Conditional Surrenders

There are many benefits of conditional surrenders, including:¹

- They can shorten the time it takes for the child to be adopted by reaching agreement about the child's future and eliminating the need for a court proceeding to terminate parental rights.
- Birth parents may have more control over planning for their child's permanency, helping them feel more worthwhile, capable, and responsible as parents.
- Birth parents take responsibility to more fully participate in the permanency plan (e.g., the parents take positive action for the child, as opposed to having their parental rights taken from them).
- They may allow ongoing contact between the birth parent and the child, thereby recognizing the importance of the birth parent and/or other birth family members (such as siblings and grandparents) in the child's life.
- They may allow exchange of important information, such as medical history and issues, between the birth parent and adoptive family.

¹ Center for Development of Human Services (2008). *Journey Through Adoption Curriculum*, pp. 19-20. (Adapted from *Conditional Surrenders of Foster Children* and *Conditional Surrenders—Issues to Consider* by Margaret A. Burt, Esq. © 2002, and from *The Adoption and Safe Families Act: Safety and Permanency Release*, NYS Office of Children and Family Services, 2002.)



Note: the health history of the child and the birth parents, with identifying information about the birth parents removed, is provided to the adoptive parent when the child is adopted, regardless of whether a conditional surrender, a surrender, or a termination of parental rights is the way in which the child is legally freed, per SSL §373-a.

2. Deciding Whether a Conditional Surrender is in the Child's Best Interests ²

When deciding whether a conditional surrender is in a particular child's best interests, the caseworker should consider the following circumstances under which conditional surrenders may be in the best interests of children:

- The child is older and knows his or her birth parents and other family members and has a positive connection to them.
- A therapist has recommended ongoing contact with the birth parents and other members of the family.
- This is a transracial adoption and ongoing contact with family members may enable the child to more easily retain his or her racial and cultural identity.
- The birth parents and foster/adoptive parents have a good relationship.
- This is a kinship family care adoption.

To further assess whether conditional surrender would be of benefit to a given child, the caseworker should determine if a conditional surrender would achieve the following:

- Spare the child and the parent the trauma of a contested or protracted termination proceeding.
- Shorten the time required for the child to achieve permanency.
- Reassure the birth parents that their rights are being protected and are not being terminated against their will.
- Allow birth parents to take responsibility and participate in the permanency plan by taking a positive action for the child.
- Allow ongoing contact between the birth parents and the child, recognizing the importance of the birth parents in the child's life.
- Allow exchange of important information, such as medical issues, between the birth parents and adoptive family.
- Allow the child to have ongoing contact with other family members, such as his or her siblings and grandparents.
- Reduce financial, emotional, and time costs to all involved.

² Ibid.

There are circumstances when a conditional surrender *may* not be in the best interests of the child, including the following circumstances:

- The child is very young and has had little knowledge or contact with his or her birth parents/family members.
- Ongoing contact by the parent with the child would pose a risk to the physical or emotional health or safety of the child.
- There have been serious problems associated with visitations between the child and his or her birth parent(s)/family member(s) during the failed reunification process.
- The child was seriously abused or maltreated by a parent and his or her parent(s)' behavior or attitude towards the child did not change during the reunification attempts.
- The child does not want contact.
- The adoptive parents do not want contact.

3. Conditions That May Be Included in a Surrender Instrument

Several types of conditions may be added to a surrender instrument. They must be specifically included in the instrument; the forms used for the surrender state that there are no conditions to the surrender unless the parties specify any conditions that have been agreed upon in the surrender itself. Some conditions that may be considered as part of a conditional surrender include: continued contact between the child and the birth family; specifying the adoptive parent; birth parents receiving information on an ongoing basis about the child such as school reports and photos; agreements about name changes for the child; and exchanging ongoing health information (one way or both ways).

Continued Contact with Birth Family Members

One type of condition that parents may ask to be included in the surrender is continued communication between the birth parent and/or other birth family members and the child after the adoption. This communication may include letters, emails, telephone calls, and/or visits. The frequency of desired contact may range from every few years to several times a month or more, depending on the needs, wishes, and agreement of those involved. This is a reflection of a trend allowing more openness in adoption where all ties between the birth family and the adoptive child are not severed. Other types of conditions the surrendering parent(s) may ask for include periodic updates about the child and information about the prospective adoptive parents.

A contact agreement executed as part of a conditional surrender may provide for communication or contact between the child and the child's birth parent and siblings, if any. The agreement is signed by the adoptive parent, the birth parent, the agency having care and custody of the child, and the child's law guardian, and must be incorporated into the court order. If the contact agreement provides for contact with a child's sibling who is over the age of 14, the sibling must sign (consent), or the agreement is not enforceable as to that sibling.

For more information about siblings and adoption, see the OCFS Informational Letter titled *Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State* (07-OCFS-INF-04).

The amount and type of desired communication among the birth family, the adoptive family, and the child falls along a continuum from open adoptions, to semi-open adoptions that involve an intermediary, to confidential adoptions. Open, or fully disclosed, adoptions allow adoptive parents, and often the adopted child, to interact directly with birth parents. In semi-open or mediated adoptions, information is relayed through a mediator (e.g., an agency caseworker or attorney) rather than through direct contact between the birth and adoptive families. In confidential adoptions, no identifying information is exchanged. The goals of more openness in adoptions are:

- to minimize the child's loss of relationships;
- to maintain and celebrate the adopted child's connections with all the important people in his or her life;
- to allow children to resolve losses with truth, rather than with fantasy.³

Because of the increasing average age of children now being adopted and their contact with birth parents and other relatives prior to the adoption, it is realistic to expect some continued contact after adoption. Many adoption professionals believe that children in foster care whose goal is adoption are likely to achieve better outcomes by maintaining their existing connections with extended birth family members, siblings, and other adults with whom they have significant positive attachments.⁴

While there has been some research about open adoption overall, systematic research has not been conducted on open adoption specifically of children from foster care. According to the Adoption and Foster Care Analysis and Reporting System (AFCARS) Report #7, published in August 2002, 82 percent of the children adopted in the United States from foster care in fiscal year 2000 were adopted by either their former foster parents (61 percent) or a relative (21 percent). These adoptions are often open, either because of a relationship developed between the birth and adoptive parents when the children were in foster care, or because the children know their birth families, including their addresses and phone numbers, and may contact them whether or not the adoption was intended to be open. New York State data show that of the children for whom an adoption placement agreement was signed by a prospective adoptive parent in 2007, more than 95% of the prospective adoptive parents were the child's current foster parent, including relative foster parents.⁵

³ Center for Development of Human Services, *Ibid.*, pp. 20-21.

⁴ *Ibid.*

⁵ NYS Office of Children and Family Services (2007). *Monitoring and Analysis Profiles with Selected Trend Data: 2003-2007*, p. 25.

There are cases in which ongoing contact between the child and the birth parent is not in the child's best interests. This may be true if:

- a birth parent is unable to maintain appropriate relationship boundaries with a child due to mental or emotional illness;
- there has been so much neglect and/or abuse of the child that any contact with that parent would only result in more trauma for the child.⁶

Even when it is not safe for the child to maintain an open relationship with a birth parent, contact with a sibling and/or an extended family member may be able to provide a meaningful connection for the child to his or her birth family without causing additional trauma.

Birth Parent Specifies the Adoptive Parent

Surrenders in which the birth parent specifies the person(s) who will adopt the child are also often referred to as conditional surrenders. The person named by the birth parent to adopt in this type of conditional surrender must be a certified or approved foster parent, where the permanency plan for the child is for the child to be adopted by that person or an approved adoptive parent in accordance with the standards set forth in 18 NYCRR Part 421.

There may be instances in which the birth parent names a person in the surrender document as the intended adoptive parent, but after the surrender is signed, that person is not willing or able to adopt the child. Under these circumstances, it is important for the caseworker to seek guidance from the supervisor and agency attorney, since there are specific legal requirements that the agency must follow for notifying the birth parent(s), the court, and the attorney for the child. The law requires that the agency promptly notify the birth parent unless the birth parent has signed a written statement expressly waiving the right to this notice (*see Section A.5*) and the document is appended to, or included in, the surrender.

If the surrender document does not contain the name of the person(s) who will be adopting the child, the SSL states that, for a child in foster care, the child will be adopted without the parent's consent by the person(s) chosen by the agency. [SSL §383-c (5)(b)(iii)]

4. Discussions Before Accepting the Conditional Surrender

Before a conditional surrender is accepted, the agency must discuss the terms and conditions of the surrender with the birth parent. If the agency has determined who will be adopting the child, the agency should also discuss the terms and conditions with the prospective adoptive parent and with the child—if the child is of an appropriate age, capacity, and maturity to determine if the terms are realistic, in his or her best interests, and mutually agreed upon. The views of the prospective adoptive parent must also be considered since the terms and conditions must be consented to in writing by the adoptive parent who also signs the surrender. Use of a trained, neutral, third-party mediator can be a helpful means of working through this process and resolving disputes.

⁶ Ibid.

If the agency believes that a conditional surrender may be in the best interests of the child, a discussion about possible terms and conditions with the birth parent(s) could help engage them in the adoption process. The following are possible conditions that could be discussed with the birth parent(s):⁷

- specifying the adoptive parent (who must be a certified or approved foster or adoptive parent);
- specifying the procedure if the identified parent cannot or will not adopt;
- exchanging information about placement;
- exchanging ongoing information about the child, e.g., school, photos, reports;
- specifying visitation plans: frequency, structure, supervision, location, changes, what will happen if there is a failure to visit as planned;
- clarifying name changes;
- exchanging ongoing health information—one way or both ways;
- arranging phone calls, letters, gifts;
- maintaining accurate sibling information or planning for sibling contact;
- arranging for grandparent information or contact.

If the agency determines that the conditions a parent wishes to have included in the surrender would be contrary to the best interests of the child, the agency should determine if the parent would execute the surrender without the terms and conditions. If the parent will not do so, the agency will need to assess the appropriateness of filing a petition to terminate parental rights petition.

5. Substantial Failure of a Material (Important) Condition

If the surrender includes one or more conditions, the surrender document must state what will occur if there is a failure to follow the agreed upon conditions. Specifically, the surrender document must state, in plain language, the following:

- The agency must notify the parent, (unless he or she has expressly waived notice by a written statement attached to or included in the surrender instrument), the attorney for the child, and the court that approved the surrender within 20 days of any substantial failure of a material (important) condition of the surrender, prior to the finalization of the adoption.
[SSL§383-c(6)(c)]
- The agency, except for good cause, must file a petition on notice to the parent and the child's law guardian in accordance with section 1055-a of the FCA within 30 days of any substantial failure of a material (important) condition of the surrender for the court to review the failure and, where necessary, to hold a hearing. If the authorized agency does not file a petition, the parent and/or child's attorney may file such a petition at any time up to 60 days after

⁷ Center for Development of Human Services, Ibid. pp. 20-21.

notification of the failure. Such petition filed by the parent or law guardian must be filed prior to the child's adoption.

- The parent must provide the agency with a designated mailing address and any subsequent changes to that address, at which the parent may receive notices regarding any substantial failure of a material (important) condition, unless the parents expressly waived such notice by a written statement attached to and included in the surrender document. [SSL §383-c (5)(c)]

D. JUDICIAL SURRENDER

When the social services official determines that a surrender is in the best interests of a child in foster care, and that a judicial surrender is the more appropriate type of surrender to be used in the case, the surrender must be executed and acknowledged before a judge of the Family Court or the Surrogate's Court in this state. In many social service districts and courts, judicial surrenders are strongly preferred over extra-judicial surrenders and many agencies will only accept judicial surrenders. This is because judicial surrenders are final immediately after they are signed in front of the judge and generally may not be revoked by the parent. An exception would be if the parent could prove that the surrender was obtained from the parent under fraud, coercion, or duress. The presence of the judge should nearly eliminate the possibility of an exception since the judge will question the parent(s) about their intention and capacity to surrender. Judicial surrenders are required if the surrendering parent is in foster care. Judicial surrenders are also required for the surrender of any child covered by the federal Indian Child Welfare Act (see Chapter 11 for more information). As stated previously, when the child is in foster care or when the parent executing the surrender is in foster care, an SSL §384 surrender may not be used.

When an agency is seeking a judicial surrender, the caseworker needs to work with the agency attorney to ask that the surrender proceeding be scheduled on the court calendar. The court must appoint an attorney to represent the child who is being surrendered to an authorized agency. In making such an appointment, to the extent possible and appropriate, the court should appoint the same law guardian who previously represented the child.

- The judge (in Family Court) or surrogate (in Surrogate's Court) must inform the parents or guardian surrendering the child that the surrender is final and irrevocable immediately upon its execution and acknowledgment.
- The parent or guardian cannot bring a case in court to revoke a judicial surrender or regain custody of the child. This does not prevent actions or proceedings brought on the ground of fraud, duress, or coercion in the execution or inducement of the surrender.
- The parent or guardian has the right to be represented by legal counsel of his or her own choosing.
- The parent has the right to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one.

- The parent or guardian has the right to have supportive counsel. (The judge may adjourn the surrender proceeding until the parent(s) have received counseling.)
- The parent or guardian is giving up the rights to custody, visit, speak, write, or learn about the child forever unless the parties have agreed to different terms.
- The parent or guardian must be informed that when the surrender is conditional, the parent has the obligation to provide the authorized agency with a designated mailing address at which the parents may receive notice of any failure of a material condition of the surrender, unless such a notice is expressly waived by a written statement by the parent and attached to or included in the surrender.
- If the parent registers with the Adoption Information Registry, as specified in Public Health Law Section 4138-d, the parent may be contacted at any time after the child reaches the age of 18 years, but only if both the parent and the adult child so choose. [SSL§ 383-c (3)(b)]

At the end of the proceeding, the judge or surrogate must give the parent a copy of the surrender. [SSL §383-c (3)(b)]

Out-of-State Judicial Surrenders

A judicial surrender of a child in foster care executed and acknowledged before a court in another state satisfies New York State requirements as set forth in SSL §383-c (3) if it is executed by a resident of the other state. The court in the other state must be a court of record which has jurisdiction over adoption proceedings in the other state. A certified copy of the transcript of that proceeding, showing compliance with section 383-c(3)(b) of the SSL, must be filed as part of the adoption proceeding in New York State. [SSL§383-c (3)(a); 18 NYCRR 421.6(d)(1)]

E. EXTRA-JUDICIAL SURRENDER

A child in foster care can, with some exceptions, be surrendered by their parent(s) outside of the court. The surrender of a child in foster care that is not executed before a judge of the Family Court or the Surrogate's Court must be signed by the parent(s) in the presence of at least two witnesses and in front of a notary public or other officer authorized to "take proof of deeds." **However, if the child being surrendered is in foster care and the caseworker is unsure of the parent's capacity to comprehend the meaning of the surrender, a judicial surrender should be taken. Also, if the parent signing the surrender is in foster care, an extra-judicial surrender may not be used; a judicial surrender before the Family Court is required.** [SSL §§ 383-c(4); and SSL 384 (2) & (3); 18 NYCRR 421.6 (d) (e) & (k)]

Caseworkers should consult with their supervisor or agency attorney to learn about their agency's policies and practices regarding extra-judicial surrenders.

1. Required Witnesses

Two persons must witness a SSL §383-c extra-judicial surrender. At least one witness must be an employee of the authorized agency trained in accordance with OCFS regulations to accept surrenders. The second witness must be either a social worker with a Master's in Social Work (MSW) degree, licensed clinical social worker, or an attorney duly admitted to the practice of law in NYS who is not an employee, volunteer, consultant, agent of, or attorney for, the authorized agency taking the surrender. A required witness may serve as the notary public at the surrender if the witness is licensed as a notary public.

Employee Witness

An employee who will serve as a witness for extra-judicial surrenders must receive in-service training and instruction on the taking of extra-judicial surrenders. At a minimum, the in-service training and instruction must cover the following:

- responsibilities of the employee witness to require that the surrender instrument is read in full to the parent(s) or guardian(s) in their principal languages;
- right of the parent(s) or guardian(s) to be provided the opportunity to ask questions about the surrender or its execution and to have these questions answered;
- responsibility of the agency to make sure that the parent(s) or guardian(s) understand their rights and the consequences of signing the surrender (which must be specified in bold print on the first page of the instrument);
- responsibility of the agency to make sure that supportive counseling is offered to the parent(s) or guardian(s);
- requirement for the affidavits to be completed by the witnesses;
- responsibility of the agency to make sure that the parent(s) or guardian(s) understand the procedures for revocation of the surrender; and that the parent(s) or guardian(s) sign and receive copies of the surrender instrument;
- responsibility of the witness to know the required surrender forms and their content; the form for the required affidavits and their contents; the requirements for revoking the surrender; and the requirements for submitting the signed surrender to the court. [18 NYCRR 421.6(e)(2)]

Non-Employee Witness

The following conditions must be met for the impartial selection and independence of non-employee witnesses:

- Any certified social worker or attorney duly admitted to the practice of law in NYS may serve as a witness to an extra-judicial surrender.
- The same person may not serve exclusively as the only non-employee witness for an authorized agency.

- Any person serving as a non-employee witness for a surrender cannot be an employee of an agency or organization contractually or financially responsible for, or involved with, the delivery of services to the child or his or her family.
- Any person serving as a non-employee witness may not be related within the second degree to an employee witness to the same surrender. [18 NYCRR 421.6(e)(2)(ii)(b)]

Note: a relative within the second degree means a person with whom one quarter of an individual's genes is shared (i.e., grandparent, grandchild, uncle, aunt, nephew, niece, half-sibling)⁸

Witnesses' Affidavits

Both witnesses before whom a surrender is executed and acknowledged must complete affidavits attesting to the facts and circumstances of the execution of the surrender.

The affidavits of the employee and non-employee witness must recite:

- the date, time and place where the surrender was executed;
- that a copy of the executed surrender was provided to the parent(s) or guardian(s);
- that the surrender was read in full to the parent(s) or guardian(s) in their principal languages and the parent(s) or guardian(s) were given an opportunity to ask questions and obtain answers about the nature and consequences of the surrender, including when there is a conditional surrender; the consequences of, and procedures to be followed in cases of a substantial failure of a material (important) condition, if any, contained in the surrender; and the obligation to provide the authorized agency with a designated mailing address, as well as any subsequent changes in the address at which the parent may receive notices about any substantial failure of a material condition (unless such notification is expressly waived by a statement written by the parent and appended to or included in the surrender);
- that the parent(s) or guardian(s) executed and acknowledged the surrender.

The employee witness affidavit must also recite:

- when supportive counseling was offered to the parent(s) or guardian(s) and whether the parent(s) or guardian(s) accepted the counseling; and if accepted, when the supportive counseling was provided and the nature of such counseling.

2. Parent's Mental Capacity

To enter into a legally binding agreement, the parent must have sufficient mental competency to knowingly agree to the terms and conditions of the surrender. The term

⁸ *Genetics Home Reference*. Retrieved from <http://ghr.nlm.nih.gov/glossary=seconddegreerelative>

“mental competency” refers both to intellectual ability and freedom from any mental condition that might impair a person’s understanding of the consequences of signing the agreement.

If the caseworker has reason to believe that a parent may not have sufficient mental competency to fully comprehend the surrender or its impact, he or she should consult with the agency’s attorney before allowing the parent to sign a surrender. The agency attorney may decide to bring the matter to the attention of the court. Some courts will order that the parent be examined by a mental health professional immediately before the parent signs the surrender.

If the surrendering parent is under the treatment of a psychiatrist, it would be advisable to ask the psychiatrist to interview the parent immediately before taking the surrender. If appropriate, the psychiatrist should be asked to certify in writing that the parent is capable of understanding the meaning of signing the surrender and is therefore competent to do so. The psychiatrist’s statement should be kept in the agency file with the surrender.

When there is a question of the mental capacity of the parent, it is recommended that the agency seek a judicial surrender. If the parent lacks the mental capacity to sign a surrender, it is recommended that the agency initiate proceedings for the involuntary termination of parental rights.

3. Seeking Judicial Approval of the Extra-Judicial Surrender

No later than 15 days after the parent signs the SSL §383-c extra-judicial surrender, the agency to which the child was surrendered must file an application and accompanying affidavits from all the witnesses for approval of the extra-judicial surrender. The affidavit must be filed with the court in which the adoption proceeding is expected to be filed or, if not known, the Family Court or Surrogate’s Court in the county in which the agency has its principal office. If the child being surrendered is in foster care as a result of a proceeding pursuant to Article 10 or 10-A of the FCA or SSL §358-a, the application must be filed in the Family Court that exercised jurisdiction over such proceeding.

Notice of the proceeding to approve the extra-judicial surrender must be given to the following people:

- the person who signed (executed) the surrender;
- any out-of-wedlock father who fits one of the categories specified in section 384-c(2) of the SSL (*see Chapter 7 for information about notice to unwed fathers*);
- other persons as the judge or surrogate may, in his or her discretion, prescribe. [SSL §383-c (4)(d)]

The law states that no person who receives notice of an approval of the surrender proceeding, and has thus been afforded an opportunity to be heard in court, may challenge the validity of the approved surrender at a later date in any other proceeding.

Notification of Surrender Approval to Adoptive Parent(s)

If the court approves the surrender, the attorney for the petitioning authorized agency must promptly serve notice of the approval to the person(s) who have been approved to adopt the child and advise that he or she may commence an adoption proceeding. Also, the prospective adoptive parent(s) must be advised of the procedures necessary for the adoption of the child and that the agency will cooperate with the parent(s) in the provision of necessary documentation to the court. (*See section E for the agency's requirements upon the court's order approving the surrender.*) [SSL §383-c(8)]

Recording of Surrender Instrument with County Clerk

Once the SSL §383-c surrender is approved by the court, the agency must take steps to make sure that the surrender is recorded in a bound book in the office of the county clerk where the surrender is executed, or where the principal office of the agency is located. The book is maintained by the county clerk, must be kept under seal and is subject to inspection and examination only as provided for in SSL §§372(3) and (4). [SSL §383-c(5)(f)]

Disapproval of the Surrender

If the court disapproves the surrender, the surrender must be deemed a nullity (invalid) and without force or effect, and the court may direct that any subsequent surrender must be a judicial surrender before the court. [SSL §383-c (4)(f)] The caseworker, in consultation with the supervisor and agency attorney, will need to inform the parent(s) of the disapproval of the surrender and decide on the appropriate next steps to achieve permanency for the child.

4. Revocation of an Extra-Judicial Surrender

A revocation of an extra-judicial surrender pursuant to SSL §383-c will be effective if it is in writing and postmarked or received by the court named in the surrender within **45 days** of the signing (execution) of the surrender. Such a surrender will be deemed a nullity (invalid) and the child must be returned to the care and custody of the authorized agency. The absence of judicial approval of an extra-judicial surrender does not affect the period for revocation of the surrender. [SSL 383-c(6)]

A revocation of the surrender more than 45 days after its signing will not be effective if the child has been placed in an adoptive home. For the purposes of the revocation of an extra-judicial surrender, no child will be considered to have been placed in the home of adoptive parents unless the fact of such placement, the date of the placement, the date of the agreement pertaining to the placement, and the names and addresses of the adoptive parents have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order. [SSL§383-c (6)]

If the agency mails or delivers a revocation of an extra-judicial surrender to the court named in the surrender more than 45 days after its execution and the child has not been placed in an adoptive home, the surrender is deemed a nullity (invalid). A child is only considered placed in an adoptive home when there is a signed adoption placement agreement.

F. SURRENDER BY A MINOR PARENT OR A PARENT IN FOSTER CARE

1. Surrender by a Minor Parent

A parent who is a minor, defined as less than 18 years of age, may sign a legally valid surrender. The caseworker should, however, take special precautions when a minor parent wishes to sign a surrender because of the potential that a surrender signed by a minor may be challenged on the grounds of uninformed consent, fraud, duress, or coercion. When a minor parent is involved, the caseworker should request that the minor be accompanied by a parent, attorney, or other person who can protect the minor's rights and help him or her to fully understand the consequences of his or her action. As noted above, the minor parent has a right to counsel. In some social services districts, the court requires that parents of a minor parent consent to a surrender signed by a minor parent.

When neither the surrendering minor parent nor the child being surrendered is in foster care, a judicial surrender executed in accordance with SSL §384 is recommended. Where the surrendering minor parent is not in foster care, but the child being surrendered is in foster care, it is recommended that a SSL §383-c judicial surrender be taken.

2. Surrender by a Parent in Foster Care

If the surrendering parent is in foster care, regardless of his or her age, a judicial surrender before a judge of the Family Court is required. This applies whether or not the child being surrendered is in foster care. Therefore, when the surrendering parent is in foster care and the child being surrendered is also in foster care, a judicial surrender must be taken. [SSL §§383-c(7) and 384(3)]

Note: Consent to a private adoption executed by a person who is in foster care must only be executed before a judge of the Family Court. [DRL §115-b (1)]

G. SURRENDER OF A CHILD NOT IN FOSTER CARE

Section 384 of the SSL prescribes the surrender process where neither the parent nor the child is in foster care. This surrender process authorizes transfer of guardianship and custody of the child to either a social services district or a voluntary authorized agency. Agencies are strongly encouraged to use judicial surrenders when the surrender involves a child of minor parents or a parent of any age with questionable capacity. If the agency has any doubts about the surrendering parent(s)' understanding of the instrument or their mental capacity to enter into a legally binding agreement, a judicial surrender should be sought.

There is no OCFS-prescribed surrender form for a child who is not in foster care (SSL §384). Many agencies have developed their own pre-printed surrender form. The SSL requires that such forms include at least the following provisions:

- The agency is authorized and empowered to consent to the adoption of the child in the place of the person signing the instrument.
- An Adoption Information Registry birth parent registration consent form, stating whether or not the parent(s)' consent to the receipt of identifying information by

the child, upon registration with the registry once the adoptee reaches the age of 18. This consent can be revoked by the birth parent(s) at any time.

- Terms and conditions that have been agreed to by the parties. If terms and conditions have been agreed to by the parties and included in the surrender instrument, the surrender instrument must also contain the provisions regarding “substantial failure of a material condition of the surrender” pursuant to Chapter 76 of the Laws of 2002 (*see Section B*).

A copy of the surrender must be given to the surrendering parent after the parent has signed it. The surrender must include the following statement: “I, (name of surrendering parent), this ___ day of _____, _____, have received a copy of this surrender (signature of surrendering parent).” The surrendering parent must acknowledge the delivery and date of the delivery in writing on the surrender.

The surrender form *may* also include the following provisions:

- The person signing the instrument waives the right to receive notice of the adoption.
- The parent will have no right to revoke the surrender after 30 days have elapsed from the date of the signing (execution) of the surrender *and* the child has been placed with adoptive parents. The standards for when a child is considered as having been placed for adoption are the same as for an SSL §383-c surrender. [SSL 384(5)]

Children Likely to Remain in the Care of the Social Services Official for More than 30 Days

The social services official who accepts the surrender agreement for guardianship and custody of the child must determine if the child is likely to remain in the care of that official for a period to exceed 30 consecutive days. If such is the case, within 30 days of such determination, the official must petition the Family Court for approval of the surrender either in the county or city where the official has an office. The court must determine, and state in the court order, that removal of the child from his or her home was in the best interests of the child and that it would be contrary to the child’s best interests to continue in his or her own home. The court must also find that reasonable efforts were made to prevent removal and that reasonable efforts were made to make it possible for the child to safely return home, or that reasonable efforts were not required. The requirements for filing this petition and the standards used by the Family Court are detailed in section 358-a of the SSL.

Revocation of Consent

The surrender instrument should contain a provision regulating a parent’s ability to revoke the surrender. Section 384 of the SSL contains procedures for the revoking of signed (executed) surrenders as follows:

- Section 384(5) of the SSL provides that if the agreement so states, the parent (except in cases of fraud, coercion, or duress) cannot revoke, or bring a court proceeding seeking to revoke, his or her surrender if more than 30 days have

elapsed since the execution of the surrender, and the child has been placed for adoption.

- The law further states that the child will not be considered to have been placed in the home of adoptive parents unless the fact of the placement, its date, and the names and addresses of the adoptive parents are recorded in chronological order in a bound book kept by the agency for this purpose (*see Chapter 7*). [SSL §384(5)]
- Any person with whom an authorized agency has placed a child for adoption, and any person having custody of the child for more than 12 months through an authorized agency for the purpose of providing foster care, has the right to intervene in a proceeding commenced to set aside a surrender executed under section 384 of the SSL. [SSL §384(3)]

The provision regarding revocation of the surrender applies only if it is included in the surrender agreement. If the clause is included, the surrender cannot be revoked after the child has been placed in the home of adoptive parents with the facts of the placement recorded in a bound volume, and 30 days have elapsed since the execution of the surrender. If any of these conditions have not been satisfied, the parent is entitled to seek to revoke the surrender. Furthermore, even where these conditions are present, the parent still may seek to annul the instrument on the grounds of “fraud, duress or coercion in the execution or inducement of the surrender.” [SSL 384(5)]

Proceeding to Determine Custody of a Surrendered Child Placed for Adoption

In an action or proceeding to determine the custody of a child not in foster care who was surrendered for adoption and placed in an adoptive home, or to revoke or annul a surrender of such child placed in an adoptive home, the birth parents will have no right to the child superior to that of the adoptive parent(s). The custody of the child will be awarded solely on the basis of the best interests of the child. [SSL §384(6)]

Chapter Five

Termination of Parental Rights and Expedited Adoptions

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A. TERMINATION OF PARENTAL RIGHTS OVERVIEW

IMPORTANT NOTE TO CASEWORKERS

This chapter contains detailed information about the termination of parental rights (TPR) and procedures for expedited adoptions. Some of this is technical, legal information that is provided for the caseworker's information, even though the agency attorney will have primary responsibility for knowing the technical details of the process. However, since the caseworker will be involved throughout the process of terminating parental rights, and will need to work closely with the agency attorney, it is helpful if the caseworker is familiar with the steps and language involved with the process.

1. Introduction

When an authorized agency 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 agency should petition the court to terminate parental rights (SSL 384-b). Sometimes, the court may order the agency to file a petition to terminate parental rights.

The decision whether to file a petition to terminate parental rights must be evaluated by the agency on a child-specific basis and be made in accordance with a child's best interests. Whenever a social services district determines that a petition to terminate parental rights should be filed, the social services district 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)]

An action to legally free the child—either the filing of the petition to terminate parental rights or seeking a surrender from the parent(s)—must be initiated within 30 days of the establishment of the permanency planning goal (PPG) of adoption, and the child must be freed within 12-months after the PPG of adoption is established. For all termination proceedings, a “child” is defined as a person under the age of 18.

The law specifies the grounds under which the court, acting on a petition from the agency, can terminate parental rights and commit the guardianship and custody of a child to the agency. Each of these grounds is discussed in detail in this chapter. The grounds are:

- Abandonment
- Permanent neglect
- Mental illness or mental retardation
- Severe or repeated abuse
- Death [of the parent(s)] (SSL §384-b)

The courts in New York State with jurisdiction to terminate parental rights and commit the guardianship and custody of a child to an authorized agency are the Family Court and the Surrogate’s Court. The law specifies the jurisdiction of each court, as follows:

- The Family Court has exclusive jurisdiction over any termination proceeding brought upon grounds of:
 - Mental illness or mental retardation
 - Permanent neglect
 - Severe or repeated abuse
- Both the Family Court and Surrogate’s Court have jurisdiction over:
 - Any termination proceeding brought on the grounds of:
 - (a) abandonment
 - (b) the parent or parents whose consent to adoption otherwise would be required are dead
 - Cases in which a child was placed or continued in foster care pursuant to an Article 10 or Article 10-a of the Family Court Act, or as a result of a voluntary placement by the parent/guardian (SSL section 358-a).
 - Multiple court proceedings about a child and one or more siblings or half-siblings who are placed in foster care through the same commissioner.

The standard of proof needed for the court to grant an order terminating parental rights and committing the guardianship and custody of a child, based on a finding of one or more of the grounds listed above, is “clear and convincing” evidence.¹ For Native American children subject to the federal Indian Child Welfare Act (ICWA), the standard is “beyond a reasonable doubt.”²

If the court decides in favor of the social services district and terminates parental rights, the court transfers guardianship and custody of the child to an authorized agency and the child is legally free for adoption. When this transfer occurs, there are specific steps the agency must take, which are discussed in Chapter 6. These include notifying the prospective adoptive parents (if identified) that an adoption proceeding may be commenced. The agency must notify the current foster parents that the child in their care has been freed for adoption and assist the foster parents in completing an application to adopt, if they want to adopt and have not already completed the application. 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. [SSL §384-b(10)] There is the requirement for the child to be placed with the pre-adoptive family for at least three months before the order of adoption in most cases [§112 of the DRL].

2. Best Interests Determination

Unless there is an exception allowed in regulation (see list of exceptions below), the social services district is required to make a determination as to whether the best interests of the child would be served through termination of his or her parent’s parental rights six months after the child is removed from the home and every six months thereafter [18 NYCRR 431.9(a)]. This determination is made by evaluating the status of the relationship of the child in foster care with his or her birth family. If it is determined that termination of the parental rights of the parent(s) would be in the child’s best interests, or if the Family Court has directed that a proceeding to terminate parental rights be started, the agency must take appropriate steps to promptly initiate proceedings to terminate parental rights.

In making the determination to terminate parental rights, the agency must consider the following [18 NYCRR 431.9(b)]:

- Whether there are indications of parental rejection of the child, which may include the failure of the parent(s), since the child was removed, or since the most recent permanency hearing, to:

¹ Before the court can make a finding, the credibility and persuasiveness of evidence presented must rise to a specific level. There are three standards of proof. The type of proceeding determines which level of proof is required.

- The highest level of proof, “beyond a reasonable doubt,” is used in criminal proceedings.
- An intermediate standard of proof is “clear and convincing,” which is used when special constitutional rights are involved, such as in the termination of parental rights (SSL §384b).
- The lowest standard of proof is “preponderance of evidence,” which is used in most civil cases. This standard is satisfied in looking at all possibilities one possibility is more than 50% likely. Allegations of abuse/neglect must be proven by a “preponderance of evidence.”

² Ibid.

- 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; or
 - 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.
- 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:
 - 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; or
 - the parent's mental retardation 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)]

Note: See Section D of this chapter for the regulatory definition and a discussion of parent's mental illness and parent's mental retardation.

3. Regulatory Standards for Filing a TPR Petition

In making the decision to terminate parental rights, the social services district must also follow certain standards that are included in law and regulations for filing a petition for termination of parental rights [SSL §384-b(3)(1); 18 NYCRR 431.9(e)(1&(2))]:

- A social services district must file a petition to terminate parental rights if one of the following events occurs:
 - The child has been in foster care for 15 of the most recent 22 months.
 - A court has determined the child to be an abandoned child.
 - A court has made a determination that the parent has been convicted of the murder or voluntary manslaughter of another child of the parent; the attempt, facilitation, conspiracy, or solicitation to commit such a murder or manslaughter; or a felony assault that resulted in serious bodily injury to the child or to another child of the parent.

4. Reasons, Including Compelling Reasons, Not to File a TPR Petition

The following case circumstances may constitute a compelling reason not to file a TPR for a particular child. These should not be considered an automatic justification not to file a TPR petition, nor is this list necessarily all-inclusive. It is important that the caseworker consult with both legal and supervisory program agency staff to determine the appropriate course of action for each case. Periodic case conferences are one mechanism for such consultation.

For every child, a case-specific determination must be made to assess whether filing a petition to terminate parental rights would be in the best interests of the child. It is not acceptable to claim a compelling reason simply by virtue of the child's membership in a broad class of children (e.g., Juvenile Delinquents, Persons In Need of Supervision, Native American children). State law specifically requires a case-by-case determination and does not allow any perceived class of persons to whom the compelling reason standard would apply.



RESOURCES

For a more thorough discussion of the requirement for case-by-case determinations, see:

- *Adoption and Safe Families Act—Information on the Act's Implementation Timeframes and Preliminary Guidance About its Termination Requirements*, issued as an Informational Letter in 1998 (98-OCFS-INF-03) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_1998/

- *ASFA Safety and Permanency*, issued as an Information Letter in 2000. (00-OCFS INF-05) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2000/

Compelling reasons not to file a petition to terminate parental rights may include the following, which are specified in regulation [18 NYCRR 431.9(e)(2)]:

- The child was placed into foster care as a result of Article 3 (juvenile delinquency, or JD) or Article 7 (Person in Need of Supervision, or PINS) of the Family Court Act 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:
 - return to his or her parent or guardian, or
 - discharge to another planned living arrangement with a permanency resource.
- When adoption is not the appropriate permanency goal for the child.
- The child is 14 years old or older and will not consent to adoption.
 - This is despite meaningful adoption counseling about the benefits of adoption and the child's awareness of 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 when the child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending Article 10 proceeding), 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.
 - This does not apply if the child has been in continuous foster care based on another type of legal authority such as a Voluntary Placement, PINS or JD.
- There are insufficient legal grounds for TPR.
 - That determination must be based on a consultation with the agency's attorney.

In addition to compelling reasons not to file a TPR, there are other reasons, allowed by law and regulation, not to file a petition to terminate parental rights. These are:

- The child is being cared for by a relative.
 - However, the agency has the discretion to file a petition to terminate parental rights when a child is cared for by a relative when it is in the best interests of the child.

- The family has not been provided with services necessary for the safe return of the child unless such services are not legally required. This may include cases in which there is a court finding of “aggravated circumstances” thereby not requiring that reasonable efforts to reunify the family be made. The “necessary services” must have been documented in the service plan and must still be necessary to safely discharge the child. [SSL 384-b(3)(1)(i)(A)&(C) and OCFS regulation 18 NYCRR 431.9(e)(2)(i)&(iii)]

5. Grounds for Terminating Parental Rights

Following is detailed information about each of the five specific grounds for the termination of parental rights. Agencies need to carefully consider which of the allowable grounds is the most appropriate for the basis of a petition to terminate parental rights, based on the specific case circumstances. The petition must include termination of the parental rights of the birth father of an out-of-wedlock child if his consent to an adoption is required by law (*see Chapter 7*).

B. ABANDONMENT

Social Services Law (section 384-b) allows for the termination of parental rights based on the grounds of abandonment under one or more of the following circumstances:

- The parent(s) abandoned the child for the period of six months, immediately before the date on which the petition is filed in Court; [SSL §384-b]
- The parent evinces (makes evident) an intent to forego his or her other parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, the parent(s)’ ability to visit and communicate is presumed.
- Evidence of the parent’s intention to maintain a relationship with the child, without supporting evidence of action by the parent, is not sufficient to outweigh other valid evidence that the parent has, in fact, abandoned the child. In making such a determination, the court will not require a showing of diligent efforts, if any, by the authorized agency to encourage the parent to visit and communicate with the child. [SSL §384-b (5)(a) and (b)]

1. Legal Elements of Abandonment

The abandonment of the child by the parent must have occurred for a period of at least six months and must still be in effect at the time the petition is filed with the court. The statute stipulates that abandonment occurs when a parent evinces (makes evident) an intent to forego his or her parental rights and obligations by failure to visit the child and communicate with the child or agency. [SSL §384-b (5)(a)]

Where there is some contact by the parent but it is minimal or insubstantial, a social services district may still be successful in terminating parental rights. Under

Section 111 of Domestic Relations Law (DRL), parental consent to adoption can be dispensed with on grounds of abandonment even when there has been some contact between parent and child, provided that contact is sporadic or insubstantial (*see below under “Communicate with the child or agency” for more information*).

The following provides a short description of the key legal elements of abandonment:

“Six months immediately before the date on which the petition is filed in Court”: A termination proceeding is initiated when the petition is filed with the court. If a parent who has not been heard from for six months or more should contact the child or the agency before an abandonment petition is filed with the court, the abandonment cause of action under SSL §384-b may be unsuccessful if the court determines that such contact was substantial. Therefore, in cases when parental abandonment exists and the agency has determined that the child’s interests and welfare will best be served by severing the parent/child relationship, it is important that a termination proceeding be initiated without undue delay.

Caseworkers should be aware that section 1089 of the Family Court Act allows a foster parent to petition the court for termination of parental rights when the court had directed an authorized agency to file a petition and such agency has failed to initiate such a proceeding within 90 days of the court’s direction. **Note:** this is a non-reimbursable expense to foster parents.

“Failure to visit the child”: Proof that a parent failed to visit the child is most easily obtained when the caseworker and the foster parents or the agency with which the child is placed keep complete and accurate records of all visits, including missed visits. The absence of an entry recording a missed visit does not prove the visit did not take place. It only proves there is no entry. To prove a missed visit there must be an entry to the effect: that the birth parent did not appear for her visit today.

“Communicate with the child or agency”: The grounds of abandonment require that a parent not only failed to visit the child but also failed to communicate with the child or with the agency for six months before the filing of the petition. Letters and phone calls by the parent may meet the standard of communication or contact.

For the parent to successfully defend him or herself in an abandonment proceeding, the parent, or a person acting on behalf of the parent, must have initiated contact with the agency and the child. Thus, the agency’s case may be successful if the agency initiated written or verbal contact with the parent but there was no response or expression of interest from the parent. As referenced above, the agency’s case may also be successful if the parent initiated communication or contact with the child or the agency during the six-month period, but that communication or contact was sporadic or insubstantial, as defined by legal precedents arising from particular cases. In such cases, consultation by the caseworker with the supervisor and the agency attorney is essential.

“Able to do so”: For the agency’s abandonment case to prevail, the parent must have had the ability to visit and communicate with the child at the time he or she failed to do so. Commuting distance, for example, has not been accepted by the courts as a justification for not contacting or visiting the child.

To aid the agency in bringing an abandonment proceeding against a parent who has disappeared, the law provides that “(in) the absence of evidence to the contrary, such ability to visit and communicate is presumed.” In other words, the court may presume that the parent was able to visit or communicate with the child or the agency unless the parent provides evidence to the contrary. A parent’s incarceration is not generally viewed as a reason for a failure to communicate or maintain contact since the prison staff and caseworker can help the parent maintain contact. (Additional information about incarcerated parents is provided later in this chapter.) In some cases, a parent may allege inability to visit the child on the basis of physical or “commuting” distance. Courts generally have discounted such an excuse, but it is possible that under certain circumstances the court might rule that, because of physical distance, the parent was genuinely unable to exercise his or her rights to visitation.

“Not prevented or discouraged from doing so by the agency”: The court must be satisfied that the agency has done nothing to contribute to the parent’s failure to visit and communicate. Even well-intended actions on the part of the agency could be interpreted as discouraging the parent. There are situations, for example, in which the agency may feel that visits from the parent should be prohibited because they are clearly and seriously detrimental to the child.

If a parent is prohibited from exercising parental prerogative by circumstances beyond his or her control, an “intent to forego his or her parental rights” cannot be demonstrated.

A word is necessary here about the case record kept by the child’s caseworker. It is likely that the parent and the parent’s lawyer will be afforded access to portions of the caseworker’s record. Entries in the record that convey a hurried, impatient, or negative attitude on the part of the caseworker may create the inference that the parents were discouraged from contacting the child even when this was not the case. Accordingly, care should be taken to record all events and communications accurately and objectively (*see Chapter 2*).

“Subjective intent of the parent . . . shall not preclude a determination”: The statute provides that the subjective intent of the parent (i.e., what he or she had in mind or wanted to do regarding the child) may not prevent a finding of abandonment when that intent has not been acted upon by the parent and there is no evidence of substantial parental visitation or communication with the child during the relevant six months period of time.

This provision makes clear that evidence of the parent’s intention to maintain a relationship with the child, without supporting evidence of action, is not sufficient to outweigh other valid evidence that the parent has, in fact, abandoned the child.

“The court shall not require a showing of diligent efforts”: In making a determination of abandonment, the agency is not required to prove that it made diligent efforts to encourage the parent to visit and communicate with the child. The statutory elements of the definition of abandonment under section 384-b of the SSL do not include a required finding that diligent or reasonable efforts were made to reunify the child with the parent or that supportive services must be made available to the parent. It is also inconsistent with federal reasonable efforts requirements. As will be seen in regard to

other grounds for the termination of parental rights, diligent efforts is a statutorily mandated element.

2. Burden Of Proof In Abandonment Cases

In an abandonment case, the burden of proof is on the petitioner (the agency), who must present “clear and convincing evidence” (for Native American children subject to the federal Indian Child Welfare Act, the standard is “beyond a reasonable doubt”) that the parent clearly shows intent to forego parental rights and obligations. This evidence must document the parent’s failure to visit the child and communicate with the child or agency, although able to do so, and not prevented or discouraged from doing so by the agency. The respondent (parent) may introduce evidence in court to rebut the presumption of his or her ability to visit and communicate with the child. If the parent’s ability to visit and communicate is questionable, and not conclusive, the court will decide its validity. A thorough familiarity with the facts of the case may enable the agency to introduce additional evidence of the parent’s ability to visit or communicate that is sufficient to rebut the parent’s evidence and satisfy the burden of proof.

3. Where To Bring The Case

Jurisdiction

A TPR petition on the grounds of abandonment may be filed in either Family Court or the Surrogate’s Court. In some counties, it might be the practice to bring abandonment cases only in the Family Court or the Surrogate’s Court.

Under some circumstances it may be advisable to allege two termination grounds in the same petition (for example, abandonment or, as an alternative, permanent neglect), either because the evidence indicates more than one ground is appropriate, or because there is a fine line between the courses of action which may be taken. [SSL §384-b (3)(d)]

Venue

A TPR proceeding based on abandonment originate in accordance with the following provisions:

- If the child was placed or continued in foster care pursuant to Article 10 or 10-A of the FCA or section 358-a of the SSL, the petition must be filed in the Family Court in the county in which the Article 10 or 10-A or section 358-a of the SSL proceeding was last heard.
 - The court must assign the proceeding, where practicable, to the judge who last heard the Article 10, Article 10-A, or section 358-a proceeding.
- If there are multiple proceedings to terminate parental rights about siblings or half-siblings placed in foster care with the same commissioner, all of the proceedings may be commenced jointly in the Family Court in any county which last heard a proceeding under Family Court Act Article 10 or 10-a regarding any of the children who are the subjects of the TPR proceedings.

- The court must assign the proceeding to the judge who last heard the Article 10 proceeding, when practicable.
- In any other case, including a proceeding brought in Surrogate’s Court, the proceeding must originate in the county where either of the parents of the child live at the time of the filing of the petition, if known. If neither of the parent’s residence is known, the petition must be filed in either the county in which the authorized agency has an office or in which the child is living at the time of the initiation of the proceeding.
- To the extent possible, the court must, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

The court hearing a TPR petition is responsible for finding out whether the child is under the jurisdiction of another family court pursuant to a child protective or foster care proceeding or continuation in out-of-home care as a result of a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If so, the court within which the most recent petition was filed must communicate with the other court, and both courts must tell the parties and the law guardian and give them an opportunity to present facts and legal argument, or to participate in the communication before the court issuing a decision. The SSL provides additional requirements to the courts under such circumstances, which the agency attorney will know about. [SSL §384-b(3)(c)(c-1)]

4. Preparing The Petition

General Procedures

The petition, which is filed in either the Surrogate’s or the Family Court, concisely informs the court of the placement history of the child and the facts that establish the grounds for a finding of abandonment. (*See Chapter 6 for information on procedures for preparing a TPR petition.*)

Required Allegations

The petition to initiate an abandonment proceeding must contain allegations sufficient to establish each element of the abandonment case, as specified in Social Services Law 384-b (4)(b) and (5)(a) and (b). Specific dates should be included in the petition which indicate that the six-month period has been satisfied. Statements in the petition must attest that the parent has abandoned the child:

- for a six-month period immediately before the date on which the petition is filed in court; and
- has failed to visit the child and communicate with the child or the agency although able to do so; and
- has not been prevented or discouraged from doing so by the agency.

Diligent Efforts to Locate Missing Parents

In any termination proceeding it is necessary that a parent be given a notice that the proceeding may result in his or her rights to the child being terminated. Personal service of the summons or citation is required. Only in those cases when the court is satisfied that personal service is not feasible will the court permit notice to be served by substituted service through publication in the newspaper most likely to be seen by the missing parent.

In most abandonment cases, however, parental whereabouts are unknown, and the caseworker is required to conduct a diligent search for the absent parents before the court will allow service by publication. (*See Chapter 6 for additional information about diligent searches for absent parents and service by publication.*) The caseworker's attempts to locate the missing parents should be detailed in an affidavit which will be submitted to the court in support of the request for publication. (*For more information about conducting a diligent search, see Chapter 7.*) [SSL §384-b(3)(e)]

5. Notifying The Respondents

The parent(s) and parent(s)' attorney must be given a copy of the petition and notice of the abandonment proceeding in advance of the court date. The notice must inform the parents:

- that the proceeding may result in an order freeing the child for adoption without consent or notice to the parent;
- that the parents have the right to counsel and that the court will assign them a lawyer if they cannot afford one. (*For a discussion of the notice requirements for fathers of children born out-of-wedlock, see Chapter 7.*)

6. The Hearing

An abandonment proceeding is usually a one-stage proceeding held before a judge, without a jury, in which the court will make a decision, based only on the evidence presented, that the child has or has not been abandoned. (Although the statute only requires a "fact finding hearing" in abandonment, some judges may call for a second stage, or "dispositional hearing," to determine whether termination would be in the child's best interests)

The agency will present witnesses who will testify to facts relevant to the issue of abandonment. Among the witnesses typically presented by the agency are the following:

- **The case supervisor:** This witness will be able to testify that the case records 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, as they otherwise fall under the hearsay exclusionary rule (*see Chapter 6*) and become admissible only under the "business record" exception.
- **The caseworker:** The child's caseworker is an absolutely essential witness in an abandonment proceeding. The caseworker will answer questions about the

child and the parent(s). Questions vary from case to case but normally will include inquiries relevant 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 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
- **The foster parent(s)/agency employee:** Depending on the circumstances of the case, the foster parents and/or an agency employee may be presented as witnesses to testify about communications and/or visits by the parent with the child and communications by the parent with the agency.
 - **The child:** Generally, the child is not called as a witness at the hearing. An attorney for the child must be assigned by the court to represent the child if the child does not have an independent attorney. If the child has relevant information to share with the court related to his or her abandonment, the child may testify in court or the attorney may arrange to have the court talk to the child, usually in the judge’s chambers. (*See discussion in Chapter 6, Section 2*) [FCA 249]

7. Consequences of the Determination

If the court determines that the child has been abandoned, it will sign an order committing the guardianship and custody of the child to the local commissioner.

Note: Prior to that determination, the child was in the commissioner’s custody but the commissioner did not have guardianship of the child. Such an order terminates the parent’s right and results in transferring the guardianship, including the right to consent to adopt, from the parent to the agency.

C. PERMANENT NEGLECT

Social Services Law (SSL), Section 384-b, defines a “permanently neglected child” as a child who is in the care of an authorized agency and whose parent or custodian has failed, for a period of either at least one year, or 15 out of the most recent 22 months, following the date the child came into the care of the agency, to substantially and continuously or repeatedly maintain contact with, or plan for, the future of the child, although physically and financially able to do so, despite the agency’s diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child.

A petition to terminate parental rights on the ground of permanent neglect may be filed even if an Article 10 proceeding is still pending a disposition, as long as the child has been in care for at least one year, or 15 of the most recent 22 months.

1. Legal Elements of Permanent Neglect

Below is a brief summary of the key legal elements of a permanent neglect case:

“To plan for the future of the child”: A parent must take the steps necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible. Good faith effort by the parent is not, by itself, the determining factor as to whether the parent has planned for the future of the child. In determining whether a parent has planned for the future of the child, the court may consider whether the parent failed to use medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to the parent.

A parent will not be deemed unable to maintain contact with, or plan for the future of the child, because of the parent’s use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized for drug or alcohol use. The time during which a parent is actually hospitalized or institutionalized cannot be counted as part of the 12-month period during which a parent failed to maintain contact with or plan for the future of a child.

Furthermore, the one-year period need not be a continuous span of 12-months, but may be a total of 12-months of parental neglect interspersed with periods during which the parent was not able to plan for or keep in contact with the child. For example, the time during which a parent is hospitalized or incarcerated cannot be counted in computing the 12-month period, however, an eight-month period of neglect immediately before the hospitalization and a four-month period immediately thereafter can be combined to constitute one year.

“failure for a period of more than one year, or 15 out of the most recent 22 months following the date the child came into care”: SSL is specific that the child must be in the care of the agency for the one-year period during which the permanent neglect occurred. There is no requirement, however, as there is for the ground of abandonment, that the one-year period immediately precede the filing of the petition in court. Therefore, even if a parent has recently engaged in contact to plan for the child, the agency may file a permanent neglect petition on the basis of the parent’s conduct during an earlier period of 12-months. In practice, however, it is preferable to file the petition promptly upon the accumulation of 12-months of conduct that constitutes permanent neglect. To delay and allow a resumption of contact after 12-months of such conduct may impact the disposition of the case and subject the child to further confusion and emotional trauma. [18 NYCRR 430.12(d)(2)]

“Substantially, continuously or repeatedly maintain contact with”: The permanent neglect cause of action emphasizes the quality of the parent’s relationship with the child in addition to the number of contacts with the child.

This language permits, but does not require, the court to make a finding of permanent neglect in cases when the parent's contacts with the child have been infrequent and lacking in substance. The same section of the law makes clear that a "visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood will not be deemed a substantial contact." It is important to realize that a perception of what is "affectionate and concerned parenthood" may vary and that the agency and the court may differ on this issue, as may different judges. [SSL §384-b (7)(b)]

Because the agency's burden of proof regarding the quality of the parental relationship involves very subjective judgments, two important requirements for the preparation of permanent neglect cases are careful case record documentation and close consultation with the agency's attorney.

"Or plan for the future of the child": In a proceeding to terminate parental rights due to permanent neglect, the parent's failure to plan for the future of the child is a separate and distinct ground for a finding of permanent neglect. Thus, even if a parent visits the child regularly, if the parent fails to make a realistic plan for the child's return home and to work constructively toward implementation of that plan, the parent could lose custody and guardianship of the child under the permanent neglect statute.

SSL broadly defines the elements that constitute a parent's failure to plan, including the failure "to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. [SSL §384-b(7)(c)]

The extent to which a parent participates in the development and implementation of the family assessment and service plan with the caseworker could become evidence in the court proceeding. The service plan details the supportive services necessary to facilitate the timely, safe reunification of the family and must be periodically reviewed with the parents and their service needs and continually reassessed by the agency. The caseworker must also record information about the parents' cooperation in finalizing the child's permanency plan in the Permanency Hearing Report that is provided to the court.

The agency has responsibility for the development of the family assessment and service plan and for attempting to involve, and consult with, the child's parents in the process. The agency is required to provide the parent(s) with a copy of the completed FASP. This is important so the parent(s) have a copy of the same document that the agency is working from, that clearly outlines the goals for the family and the actions the parents and service providers will take to achieve those goals. Parental cooperation is essential if the agency is to meet its responsibility to finalize the child's permanency plan and return the child home within a reasonable time.

In determining whether the parent has planned for the child's future, the court may consider whether the parent(s) failed to make use of services that were available and offered to the parent(s), including:

- Medical services
- Psychiatric services

- Psychological services
- Parenting skills training
- Drug and alcohol rehabilitative services
- Other necessary social and rehabilitative services
- Any material resources made available to the parent [SSL §384-b (7)(c)]

The parents' failure to avail themselves of these services must be carefully documented by the caseworker in the Progress Notes and referral and other forms and reports by service providers contained in the Uniform Case Record.

The determination of whether there has been an actual failure to plan will require careful consideration of almost every aspect of the parent's situation. Because there are so many elements involved in this determination, careful consultation with the agency's attorney will be necessary in cases when the agency intends to rely on the parents' failure to plan as the basis for initiating a permanent neglect proceeding.



Note: In any situation when facts exist that may support either a failure to plan or a failure to maintain contact with the child (or both), the agency should include both elements in its petition. The combination may significantly strengthen the case for termination on the grounds of permanent neglect.

“Although physically and financially able to do so”: The parent's ability “to do so” is required for the grounds of both failure to maintain contact and failure to plan. Social Services Law Section 384-b specifies how various situations will affect a parent's ability. For example, a parent is considered able to maintain contact or plan in spite of his or her use of drugs or alcohol. However, the statute provides that the parent will be deemed unable to maintain contact or plan when he or she is “actually hospitalized or institutionalized” because of drug or alcohol use. (If the parent is hospitalized or institutionalized as the result of a condition meeting the definition of “mental illness” or “mental retardation” contained in Section 384-b, the agency may consider seeking termination on the basis of one of those grounds and also seek termination on the basis of permanent neglect.) [SSL §384-b(7)(d)(1)]

Incarcerated parents: In addition, those parents who are incarcerated are obliged to fulfill the requirements of visiting or communicating with the child. However, the law recognizes the special circumstances of an incarcerated parent and his or her need for assistance to maintain contact with, or plan for the future of, his or her child.

When a parent is incarcerated, suitable arrangements must be made with the correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. Arrangements for the parent to visit the child outside the correctional facility are not required unless reasonably feasible and in the best interests of the child. When no visitation between the child and the incarcerated parent has been arranged for or

permitted by the authorized agency because such visitation is determined not to be in the best interests of the child, then a permanent neglect proceeding may not be initiated on the basis of a lack of such visitation. If the parent is incarcerated outside of New York State, the agency is only required to make visiting arrangements if “reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility.”

Any time that a parent spends hospitalized or institutionalized because of drug or alcohol use cannot be included when computing the 12-month period of permanent neglect, because the parent’s physical ability to visit, plan, and maintain contact—a specific element of the cause of action—is thereby restricted. The statute, however, specifically provides that this period of time cannot be counted as interrupting the one-year period; in other words, a period of conduct qualifying as permanent neglect immediately preceding hospitalization or institutionalization can be added to a period of similar conduct immediately thereafter to comprise 12 months. [SSL §384-b(7)(d)(f)(5)]

The statute requires that the parent be financially as well as physically able to visit, plan, and maintain contact. Financial ability has been interpreted as the possession of minimally adequate financial resources. In this connection, the parent’s receipt of adequate public assistance funds will usually qualify as sufficient financial ability. Some agencies provide assistance to parents to facilitate visits with children and/or when there is a financial need. It is important that the caseworker document these efforts to financially assist parents with transportation to visits and other services to demonstrate to the court that the agency offered this assistance.

Significantly, the terms “mentally” and “emotionally” have been omitted from the statutory language. Therefore, theoretically, even if the parent is actually unable to maintain contact or plan by virtue of a mental or emotional disability, the agency may still pursue a permanent neglect cause of action. In general, however, many such cases are likely to meet the requirements of the mental illness or mental retardation cause of action (*see Section D*).

Finally, the statute provides that in the event a parent fails to appear to defend the case after he or she has received proper notice of the proceeding, the physical and financial ability of the parent may be presumed. This provision, substantially the same as the presumption of ability which operates for an abandonment cause of action, means that the agency may not be required to prove the physical and financial ability of a parent whose location is unknown.

“Notwithstanding the agency’s diligent efforts to encourage and strengthen the parental relationship”: The statute provides that the parent’s failure to maintain contact or plan must be “notwithstanding the agency’s diligent efforts to encourage and strengthen the parental relationship.”

In an ordinary case, therefore, the agency will have to prove that it exercised diligent efforts. As used in the sections of SSL related to permanent neglect, “diligent efforts” is defined to mean reasonable attempts by an authorized agency to assist, develop, and encourage a meaningful relationship between the parent and child, including but not limited to:

- consulting and cooperating with the parents in developing a plan for appropriate services to the child and his family;
- making suitable arrangements for the parent to visit the child (except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility are not required unless reasonably feasible and in the best interests of the child);
- providing services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated; and
- informing the parents at appropriate intervals of the child's progress, development, and health. [SSL §384-b(7)(f)]

Notice that the services listed are not all-inclusive. In a given case, therefore, the court may consider whether the agency made other efforts or provided other services to reunite the family before it will make a finding of permanent neglect. Because of this possibility, it must be stressed that the agency should provide every reasonable service available and appropriate to a particular case.

Evidence of diligent efforts by an agency to encourage and strengthen the parental relationship are not required in a permanent neglect proceeding when:

- the parent has failed, for a period of six months, to keep the agency informed of his or her location;
- an incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist the parent to plan for the future of the child; or
- a court has previously determined that reasonable efforts to make it possible for the child to return safely to his or her home are not required. (SSL §384-b(7)(a)&(c))

The language of the statute provides assistance in determining what services the agency must provide to satisfy the statutory requirement, and it is useful to repeat that language here.

As the agency may be called upon to prove in court the efforts that it has made, accurate and timely documentation in the case record is essential. An agency must be able to document what steps were necessary to reunite the family, what the parent may have done or attempted to do to accomplish this goal, and what has been done to identify the essential steps to the parent. It is particularly important to note whether the parent has accepted and followed through on opportunities for counseling, medical, psychiatric care, or other services that were available and which have been recommended as resources to help the parent to be able to safely resume caring for his child.

The responsibility of the agency is essentially to demonstrate that diligent efforts have been made to keep the parent informed of the child's whereabouts, progress, and problems, to encourage and cooperate with the parent in arranging frequent and

meaningful visits, and to assist the parent, either directly through counseling or through arranging for other essential services, to take the steps necessary to reestablish the home and provide adequate care for the child. If the parent is unresponsive to these efforts over at least a one-year period, the agency should determine whether TPR is advisable.

Just as the court may require agency efforts in addition to those listed in the statute, the court, in situations when warranted, may be satisfied with a limited service provision by the agency.

In most cases the agency will have to exercise diligent efforts. Examples of services that might be appropriate include the following:

- Drug or alcohol rehabilitation programs
- Assistance in obtaining employment
- Housing assistance
- Public assistance, if necessary
- Medical and psychiatric assistance
- Homemaker services
- Assistance from public health nurses
- Occupational rehabilitation
- Parent training or parent aide services
- Other available services appropriate to the particular case

Moreover, when the agency seeks to terminate parental rights on the ground of permanent neglect, the agency's good faith in dealing with the parent will be essential. Care should be taken to avoid agency action that might suggest bad faith, as, for example:

- making unreasonable demands of parents that go beyond those actions necessary to facilitate a successful reunion of parent and child;
- refusing to allow a reasonable amount of visitation between parent and child consistent with the safety of the child; or
- allowing the foster parents to turn the child against the parents or allowing the child to act out against the parents.

“When such efforts will not be detrimental to the best interests of the child”:

The statute provides that the agency will not be held accountable with respect to its diligent efforts to a parent when the circumstances in a particular case determine that such efforts would be detrimental to the best interests of the child, and also in the case when the parents move and neglect to inform the agency of their whereabouts for a period of six months. [SSL §384-b(7)(a) and (7)(e)(i)]

The decision that efforts at rehabilitation will be detrimental to the best interests of the child is a highly subjective one in many cases. Careful consideration must be given to a decision to limit diligent efforts. There are situations that present such clear danger to

the child's physical and emotional well-being that the agency may consider ceasing rehabilitative efforts. These cases can include situations in which the parent:

- is using hard drugs;
- leaves a young, immature, or disabled child alone at home;
- is physically abusive to the child;
- is frequently intoxicated;
- has a serious emotional disturbance;
- has a behavioral deviation; or
- has sexually abused the child.

Although these situations may seem clear, there may be cases when harmful behavior is the direct result of a serious educational, financial, emotional, or medical disadvantage that could be corrected substantially if proper services were provided to the parent. In such a situation, a court may be reluctant to terminate the parent's rights without requiring that the agency supply needed services.

“When a court has previously determined that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency will not be required to demonstrate diligent efforts.” [SSL §384-b (7)(a)]

The agency is not required to demonstrate diligent efforts if a judge has previously determined that reasonable efforts to make it possible for a child to return safely to his or her home are not required. A determination that reasonable efforts are not required may be made in all categories of foster care cases.

Reasonable efforts to make it possible for the child to return safely home are *not* required (*see exception on page 22*) when:

- 1) The parent has subjected the child to aggravated circumstances, which means:
 - the child has been either severely or repeatedly abused as defined in Social Services Law Section 384-b (8) (*See Section E of this chapter*); or
 - a child has subsequently been found to be an abused child within five years after return home following placement in foster care as a result of being found to be a neglected child, provided that the respondent(s) in each of the foregoing proceedings was the same; or
 - the court finds, by clear and convincing evidence, that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal of the child, to engage in services necessary to eliminate the risk of abuse or neglect if the child were to be returned to the parent. In addition, the parent has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission

could eliminate the requirement that the local DSS provide reunification services to the parent, 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, including but not limited to, a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure will not constitute aggravated circumstance; or

- a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

2) The parent has been convicted of:

- murder in the first degree (Penal Law Section 125.27) or murder in the second degree (Penal Law Section 125.25); or
- manslaughter in the first degree (Penal Law Section 125.20); or
- manslaughter in the second degree (Penal Law Section 125.15);

and the victim was another child of the parent and the parent acted voluntarily in committing the crime.

3) The parent has been convicted of:

an attempt to commit any of the foregoing crimes and the victim or intended victim was the child or another child of the parent.

4) The parent has been convicted of:

- criminal solicitation (Penal Law Article 100);
- conspiracy (Penal Law Article 105); or
- criminal facilitation (Penal Law 115); or
- for conspiring, soliciting, or facilitating any of the foregoing crimes;

and the victim or intended victim was the child or another child of the parent.

5) The parent has been convicted of:

- assault in the first degree (Penal Law Section 120.10); or
- assault in the second degree (Penal Law Section 120.05); or
- aggravated assault upon a person less than 11 years old (Penal Law Section 120.12);

and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent.

6) The parent has been convicted in any other jurisdiction of an offense, which includes all of the essential elements of any crime specified above, and the victim of such offense was the child or another child of the parent.

- 7) The parental rights of the parent to a sibling of such child have been involuntarily terminated;
- **unless the court determines and states in its order that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future.** [FCA 352.2(2)(c), 754(2)(b), 1039-b and 1052(b)(i)(A), and SSL §358-a(3)(b)]



Note: The local DSS has the discretion to seek an order from the Family Court ordering that reasonable efforts to make it possible for the child to return safely to his or her home are not required. It is important to note that such a determination by the court does not mean that the agency is prohibited from making such efforts. If the court makes a determination that no reasonable efforts are required, the agency should still assess what type of services are appropriate for the family and provide such services without delaying the permanency plan for the child. When the court issues an order that reasonable efforts to reunify the child with his or her parent(s) are not required, the agency is still required to make reasonable efforts to finalize the child's permanency plan.

2. Burden of Proof and Evidence in a Permanent Neglect Case

Unlike the abandonment trial, in which the statute provides only for a single proceeding, permanent neglect proceedings are divided into two separate stages: the fact-finding and the dispositional stages.

The Fact-Finding Hearing

During the fact-finding stage, the agency carries the burden of proving its case; if the agency does so, the court may make a finding of permanent neglect.

Regarding the requirements for admissible evidence, Family Court Act Section 624 provides that only “competent, material and relevant evidence may be admitted in a fact-finding hearing.” This rule conforms to the general rule in most civil cases and allows the introduction of any evidence that would qualify as competent, material, and relevant, according to the guidelines discussed in Chapter 6. [FCA 624]

It should be noted that, according to Family Court Act Section 624, evidence of the parent's contact with a child, or failure to contact the child, during the period of time after the filing of the petition is inadmissible at the fact-finding hearing. As the court may not consider this evidence in making its determination, the agency should file the petition without concern that its case will be unsuccessful due to a sudden parental interest spurred by the initiation of the proceeding rather than by a genuine concern for the child. However, if this sudden interest by the parent results in the denial of the petition, the agency may seek to appeal the decision (*see Chapter 6*). [FCA 624]

If the court determines that the child has been permanently neglected, then the dispositional stage begins.

The Dispositional Hearing

At the dispositional hearing, the agency must prove that TPR and freeing the child for adoption are in the best interests of the child. [FCA 623] According the Family Court Act Section 625 (a), at the discretion of the court the dispositional hearing may:

- begin immediately after the fact-finding hearing; or
- be dispensed with on the consent of all parties, and the court may make a disposition based on the competent evidence presented during the fact-finding stage.

Because the purpose of the dispositional hearing is not the adjudication of rights but the fashioning of a dispositional alternative that will best serve the welfare of the child, the court is afforded wider latitude to hear evidence than in the fact-finding stage. Thus Section 624 of the Family Court Act requires only that the evidence presented in the dispositional stage be material and relevant. Unlike the fact-finding hearing, in which only first-hand facts supporting the elements of permanent neglect are admissible, the dispositional hearing may include as evidence written reports, evaluations, and opinions that relate to the background of the child and family, and expert recommendations as to proper disposition.

A foster parent having continuous care of a child for 12-months is entitled to intervene as a matter of right and become a party to the dispositional hearing. At disposition, all the parties are considered legal strangers to the child and there are not presumptions favoring a birth parent over a foster parent. Each case is decided solely on the basis of the child's best interests.

In addition, evidence of parental contact or failure to maintain contact after the filing of the petition is permitted in a dispositional hearing. The court may consider this evidence, but it cannot be, by itself, a sufficient basis to preclude or require an order committing the custody and guardianship of the child to the authorized agency. (*For dispositional alternatives, see C.7.*) [FCA 624]

The caseworker should note the significant omission of any requirement of "competent" evidence during the dispositional hearing. This omission makes it possible for the court to consider evidence that would be excluded from the fact-finding stage as inadmissible hearsay or opinion evidence. Examples of evidence that the court might consider at the dispositional stage include:

- Psychiatric and psychological evaluation
- Probation and police reports
- Social investigations that include recommendations by the agency or court social worker
- Recommendations of the attorney for the child

Any evidence contained in the first three kinds of reports is confidential and may be disclosed only according to the provisions of Family Court Act Section 625 (b):

The court may request that the probation department, or another agency, prepare a report to provide the court with more information before the court making of an order of disposition. These reports are confidential and the court has the discretion to disclose or withhold portions of the report, or the entire report, from the attorney for the child, other attorneys, the parties to the proceeding, or other appropriate person. This type of reports may only be given to the court after the fact-finding hearing is completed but may be used in a dispositional hearing or in the making of an order of disposition without a dispositional hearing pursuant to subdivision (a) of FCA 625.

3. Where to Bring the Case

Jurisdiction

A permanent neglect cause of action may be brought only in Family Court, which possesses exclusive jurisdiction over this kind of proceeding.

Venue

The agency must initiate the TPR proceeding based on permanent neglect in accordance with the following requirements:

If the child was placed in foster care pursuant to Family Court Act Article 10, the proceeding will originate in the Family Court in the county in which the proceeding pursuant to Family Court Act Article 10 was last heard. (The proceeding will be assigned, whenever practicable, to the judge who last heard such proceeding.)

If multiple proceedings are commenced under Social Services Law Section 384-b about a child and one or more siblings or half-siblings of such child, placed in foster care with the same commissioner pursuant to Family Court Act Section 1055, all of such proceedings may be commenced jointly in the Family Court in any county which last heard a proceeding under Family Court Act Article 10 regarding any of the children who are the subjects of the TPR proceedings under Social Services Law Section 384-b. (The proceeding will be assigned, whenever practicable, to the judge who last heard such proceeding.)

In any other case, the proceeding must originate in the county where either of the parents of the child live at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child lives at the time of the initiation of the proceeding.

The court hearing a TPR petition is responsible for finding out whether the child is under the jurisdiction of another family court pursuant to a child protective or foster care proceeding or continuation in out-of-home care as a result of a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If so, the court with in which the most recent petition was filed must communicate with the other court, and both courts must tell the parties and the law guardian and give them an opportunity to present facts and legal argument, or to participate in the communication before the court issuing a decision. The SSL provides additional requirements to the courts under such circumstances, which the agency attorney will know about.

(To the extent possible, the court will, when appointing an attorney for the child, appoint an attorney for the child who has previously represented the child.) [SSL §384-b(3)(c)]

4. Preparing the Petition

General Procedures

See Chapter 6 for information on procedures for preparing a TPR petition.

Required Allegations

The petition that initiates a permanent neglect proceeding must contain allegations sufficient to establish each element of the cause of action.

5. Notifying the Respondents

As in all termination proceedings, the parent(s) and the parent(s)' attorney must be given a copy of the petition and a notice of proceedings, preferably through personal service, before the trial. [SSL §§384-b(3)(e) & 384-c] (*See Chapter 6, section B, for further discussion. For a discussion of the notice requirements for fathers of children born out-of-wedlock, see Chapter 6, Section B. 4.*)

6. The Hearing

As explained above, a permanent neglect proceeding consists of two stages: a fact-finding hearing and a dispositional hearing. In both the fact-finding and the dispositional hearings, the court will hear evidence from witnesses presented by the parties. (The types of evidence admissible in each of these hearings are discussed in section C.3.) In a permanent neglect proceeding the agency may use various persons as witnesses, including the following:

- **The case supervisor:** The supervisor often lays the foundation for introduction of the case record.
- **The caseworker:** The child's caseworker will be an essential witness in a permanent neglect proceeding. The caseworker will answer questions about the child and the parent, questions which may vary from case to case, but which normally will include inquiries relevant to the following:
 - 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 agency 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.

- **The foster parent(s):** (*See Chapter 4, Section A.*) The agency may need the foster parents to testify to the child's current condition and functioning. They also may be need to give evidence regarding any special care needs of the child.
- **The child:** (*See Chapter 6.*) Generally, the child is not called as a witness at the hearing. An attorney (attorney for the child) will be assigned by the court to represent the child if independent legal representation is not available to the child. If the child has relevant information to share with the court, many judges prefer to talk informally with the child in the judge's chambers. [FCA 249]
- **Other persons:** Other persons who have relevant information about the parent's failure to maintain contact with the child or plan for the child. The identity of these witnesses will vary depending upon the factual circumstances of each case, but they will be persons with firsthand knowledge of the parents and/or the child. These witnesses may include the following:
 - School officials or teachers who have dealt with the parents
 - Relatives, neighbors, or employers of the parents
 - Persons who have observed parent/child contacts
 - Expert witnesses, such as psychologists, psychiatrists, other social workers, or therapists who have worked with or tested the parent (assuming this testimony is not inadmissible on the ground of confidentiality)
 - Law enforcement officials who have been involved with the parent, when relevant
 - Medical witnesses, when relevant

It should be noted that when both a fact-finding and a dispositional hearing are held, certain witnesses listed above may be required to testify in both phases. The caseworker should give the agency's attorney a list of all possible witnesses with important firsthand knowledge relevant to the elements which the agency must prove, so that the attorney may decide whether the witnesses will be presented and in which phase they will be needed.

7. Consequences of the Determination (Dispositional Alternatives Available to the Court)

The law allows the court to make one of three dispositions at the conclusion of a permanent neglect proceeding. The sole criterion to be used in making the disposition is the "best interests of the child." The three dispositions, discussed on following pages in more detail, are: [FCA 631]

- Dismissal of the petition
- Suspended judgment
- Commitment of the guardianship and custody of the child from the commissioner to the agency

Dismissal of the Petition

If the statutory elements of permanent neglect have not been established by clear and convincing evidence, the court must dismiss the petition. Even if the court dismisses the permanent neglect petition, it may choose to “reconsider an underlying order of placement or commitment” if a party has requested the court to do so during the course of the permanent neglect proceeding or upon the court’s own motion on notice to all parties. By such action the court could conduct a permanency hearing and order an extension of foster care or a return of the child to the parent, for example. [FCA 632]

Suspended Judgment

The court may suspend its judgment if it finds that the parent has permanently neglected the child but feels that the best interests of the child require that the parent/child relationship be given one more chance. Under these circumstances, judgment may be suspended for a maximum of one year “unless the court finds at the conclusion of that period that exceptional circumstances require an extension of that period for an additional year.”

A suspended judgment may not extend beyond two years, no matter what circumstances are present. To make sure that all appropriate efforts are made by the parties involved and to minimize any misunderstanding regarding the responsibilities of the parent, the court’s order must specify the parent’s obligations, as indicated in the Family Court Rules 22 NYCRR 205.50 regarding permissible terms and conditions of an order suspending judgment when a finding of permanent neglect is entered. [FCA 633]

A suspended judgment must be related to the adjudicated acts or omissions of the respondent parent and contain at least one of the following terms and conditions requiring the parent to:

- sustain communication of a substantial nature with the child by letter or telephone at stated intervals;
- maintain consistent contact with the child, including visits or outings, at stated intervals;
- participate with the agency in developing and carrying out a plan for the future of the child;
- cooperate with the agency’s court approved plan for encouraging and strengthening the parental relationship;
- contribute toward the cost of maintaining the child if the parent has sufficient means or is able to earn such means;
- seek to obtain and provide proper housing for the child;
- cooperate in seeking to obtain and accepting medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, employment or family counseling or child guidance, and permit information to be obtained by the court from any person or agency from whom the parent is receiving or was directed to receive such services;

- satisfy all other reasonable terms and conditions that the court determines to be necessary or appropriate to ameliorate the acts or omissions that gave rise to the filing of the petition.

Other provisions that the order may contain and the procedures that must be followed in the event that the parent fails to comply with the court's directions are also set forth in Family Court Rules 22 NYCRR 205.50 (b) & (c):

The order must include the duration, terms, and conditions of the suspended judgment. A copy of the order must be given to the respondent parent.

The order must include a written statement in conspicuous print informing the parent that if the parent fails to obey an order, this may lead to revocation of the order and to the issuance of a new order for the commitment of the guardianship and custody of the child.

The court may set one or more times at which the respondent or the agency caring for the child must report to the court as to whether there is compliance with the terms and conditions of the suspended judgment and in no event later than 30 days before the date the suspended judgment expires. If the suspended judgment is not revoked or extended, there can be no TPR based on the court's finding of permanent neglect. In such a case, a second permanent neglect petition will have to be filed and new fact-finding and dispositional hearings held. .

If a respondent parent fails to comply with the terms or conditions of an order suspending judgment, a motion or an order to show cause for revocation of the order may be filed. The motion or order to show cause must contain a concise statement of the acts or omissions alleged to constitute noncompliance with the order. Service of a summons and a copy of the petition must be made in accordance with Section 617 of the Family Court Act.

If, after a hearing, the court is satisfied that the allegations of the petition have been established, the court may modify, revise, or revoke the order of suspended judgment. The court may at any time, upon notice and opportunity to be heard to the parties, their attorneys, and the attorney for the child, revise, modify, or enlarge the terms and conditions of a suspended judgment previously imposed. Another possible disposition is commitment of guardianship and custody of the child to the agency.

D. MENTAL ILLNESS AND MENTAL RETARDATION

Mental illness or mental retardation of the child's parent are two additional, distinct grounds for terminating parental rights and freeing a child for adoption. Although they are separate grounds, the same statutory sections govern them, and the elements of each cause of action are essentially the same. To determine whether the facts of a case will support a TPR proceeding on the ground of mental illness or mental retardation, the situation should be looked at from two perspectives: the actual condition of the parent, and the effect of that condition on the well-being of the child in the event of the child's return home. This determination is usually successful on the basis of the most convincing experts.

1. Legal Elements of Mental Illness and Mental Retardation Grounds

The elements of a mental illness or a mental retardation cause of action are underlined in the relevant sections of the law presented below:

An order committing the guardianship and custody of a child pursuant to mental illness or mental retardation will be granted only when:

- The parent or parents are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately before the date on which the petition is filed in the court. [SSL §384-b (4)(c)]
- The legal sufficiency of the proof in a proceeding will not be determined until the judge has taken the testimony of a psychologist or psychiatrist.
- A determination or order will in no way affect any other right, or constitute an adjudication of the legal status of the parent.

The judge must order the parent to be examined by, and take the testimony of, a qualified psychiatrist or a licensed psychologist appointed by the court pursuant to section 35 of the Judiciary Law. If the parent refuses to submit to the court-ordered examination, or if the parent is unavailable either before or after the proceeding begins, by leaving the state or hiding, the appointed psychologist or psychiatrist, upon the basis of other available information, including but not limited to, agency, hospital or clinic records, may testify without an examination of the parent, provided that such other information affords a reasonable basis for his or her opinion. The parent and the agency have the right to submit other psychiatric, psychological, or medical evidence. [SSL §384-b(6)(c)-(e)]

2. Legal Elements of a Mental Illness or Mental Retardation Cause of Action

Mental Illness

For purposes of a TPR proceeding, mental illness is defined in Social Services Law 384-b (6)(a) as follows:

“Mental illness” means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the Family Court Act” and the parent is unable presently and for the foreseeable future to provide adequate and proper care for the child.

This definition is of limited practical help to the caseworker in deciding whether a parent’s condition qualifies as “mental illness.” When the parent’s behavior suggests a diagnosis of mental illness, the caseworker must seek the advice of a mental health professional, who should interview both the parent and child to determine whether mental illness exists, the effect of the parent’s condition on the child, and the prognosis for improvement. In certain situations, the diagnosis may be aided by the parent’s psychiatric history or by an earlier diagnosis of, or hospitalization for, mental illness.

The caseworker should note, however, that the parent's condition must place the child "in danger of becoming a neglected child as defined in the Family Court Act." If the child is not in danger of becoming a neglected child by virtue of the parent's mental illness, the parent's mental condition may not be the basis for termination of parental rights.

A neglected child is defined in the Family Court Act, Section 1012 (f) as a child less than 18 years of age whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his or her parent or other person legally responsible for his or her care to exercise a minimum degree of care:

- in supplying the child with adequate food, clothing, shelter or education, or medical, dental or optometrical, or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
- in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including:
 - the infliction of excessive corporal punishment; or
 - by misusing a drug or drugs; or
 - by misusing alcoholic beverages to the extent that he/she loses self-control of his/her actions; or
 - by any other acts of a similarly serious nature requiring the aid of the court.

However, when the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he/she loses self-control of his actions will not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired.

- who has been abandoned, in accordance with SSL §384-b(5), by his/her parents or other person legally responsible for his care.

There are, therefore, two basic considerations: the mental condition of the parent, and how that condition affects the parent's child caring capacity. Both of these elements must also be present to create a cause of action based on mental illness.

Mental Retardation

Mental retardation is defined in SSL §384-b(6)(b) as "sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the Family Court Act."

The parent's mental retardation must be of such a nature as to place the child in danger of becoming a neglected child, as defined above. The statute specifies that the mental retardation must have originated "during the developmental period." Thus,

records indicating that the retardation was present during the parent's childhood will be extremely important in supporting the agency's position. If the mental retardation developed later in the parent's life due to some other cause, the elements of the statute will not be satisfied. If this situation should arise, the caseworker should see if the factual circumstances satisfy the elements of any of the other termination causes of action.

The caseworker must rely only on mental health professionals for a clinical determination that the parent is, in fact, mentally retarded. Although certain objective behavior patterns may indicate that the parent has neglected or is likely to neglect the child, the mental health expert also will be invaluable in predicting whether the parent's mental condition is such that the child is likely to be neglected in the future.

“Presently and for the foreseeable future unable”: Both the grounds of mental illness and mental retardation must be the cause of the parent's present inability to provide proper and adequate care for the child, and it also must be the basis of the parent's future inability. Future inability to provide proper and adequate care is a key element in any proceeding to terminate parental rights on the basis of mental illness or mental retardation.

There may be situations in which a parent's mental illness or retardation is only a partial cause of the parent's inability. For example, the parent may also be disabled by a physical illness or drug or alcohol addiction. If the caseworker can establish that the parent's mental condition in and of itself would place the child in danger of becoming a neglected child, it is possible that the parent's rights might be terminated on this ground. It is more likely, however, that it will be difficult to clearly separate the parent's mental condition from the other disability. In this situation it may be possible to file a petition alleging more than one ground for termination, such as mental retardation and permanent neglect, for example, depending upon the specific facts of the case.

The statute does not define the term “foreseeable future.” Consequently, the subjective determination of what constitutes the “foreseeable future” may vary from court to court. There is case law that addresses this issue.

Finally, the caseworker must note that “presently and for the foreseeable future” refers to the parent's continuing inability to care adequately for the child, and not to the parent's continuing mental condition. Therefore, the statutory criteria will not be satisfied when, for example, the parent's mental condition, although long-term, may improve sufficiently to allow him or her to care for the child properly within a reasonable period of time.

“Proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately before the initiation of the proceeding”: As with “the foreseeable future,” there are no statutory criteria in Section 384-b of the Social Services Law to indicate what constitutes “proper and adequate care.” However, if the level of parental care would place the child in danger of becoming a neglected child, a cause of action for TPR can be sustained.

For the agency to satisfy the statutory elements of permanent neglect, the child must have been in the agency's care for a continuous year up to the date the petition is filed. It is interesting to note that the one-year requirement does not refer specifically to

the period of the parent's mental disability, but is the time frame required by the statute before an agency can consider termination based on mental illness.

It is, therefore, theoretically possible for a TPR proceeding to be successful if a parent develops a mental illness during the 12-month period of the child's time in foster care, if a professional diagnosis determines that the condition will continue "for the foreseeable future" and that it would not be in the best interests of the child to return him or her to the parent. This is the exception rather than the rule, however, especially since, in cases involving mental illness or mental retardation, examination must be conducted, and the testimony presented, by a psychiatrist or psychologist appointed by the court.

Although the court orders the parent to be examined, in many cases it will fall on the caseworker to make sure that the examination is scheduled and actually carried out.

3. Burden of Proof in a Mental Illness or Mental Retardation Case

In a proceeding to terminate parental rights on the ground of mental illness or mental retardation, the petitioner is required to prove its case by "clear and convincing evidence" (or, in the case of a Native American child subject to the provisions of ICWA, the standard is "beyond a reasonable doubt.")

Both the parent and the agency have the right to submit other psychiatric, psychological, or medical evidence. Thus, each side has the opportunity to fully present its case, with the added protection of an examination by a neutral expert. The agency normally will employ its own expert to examine the parent and testify in court. The caseworker and the agency's attorney should be careful to provide sufficient evidence through documentation and expert testimony about three aspects of the parent's condition:

- **Diagnosis:** When and by whom was the condition of the parent diagnosed?
- **Prognosis:** Show clearly that services and/or psychiatric treatment, counseling, or training will not enable the parent to provide adequate care for the child, either now or in the foreseeable future.
- **Evidence of incapacity:** Expert testimony furnished to explain the diagnosis and prognosis.

Refusal of parents to cooperate: The parent may refuse to undergo the court-ordered examination, or he or she may purposely not be available for it, thereby attempting to thwart the proceedings. The statute tries to rectify this situation by allowing the court-appointed expert to testify to his or her opinion of the parent's mental condition based on other available information, as long as the information provides a reasonable basis for such opinion. Information specifically authorized by statute for the expert's use includes agency, hospital, or clinic records. Other reliable sources may also be used if they provide accurate and relevant information upon which the expert's opinion can be based. The caseworker should make a careful check of the case record for any reports or other sources of information that would be useful to the agency's attorney if the expert should have to state an opinion without the benefit of an examination of the parent. [SSL §384-b(6)(e)]

Privileged matter: New York law mandates that certain communications between persons in various capacities be confidential and not available for disclosure,

even in a court of law. The privileged nature of these communications is designed to encourage those in need of professional assistance to seek it with confidence and to protect the sanctity of the marital relationship. Public policy, however, is always subject to multiple, and sometimes competing, considerations that may make a policy decision give way to a more important consideration. In terminating parental rights, the need for permanency in a child's life has been determined by the Legislature to be of greater importance than the confidentiality of certain communications, and therefore the following communications are admissible as evidence in a TPR proceeding based on mental illness or mental retardation:

- Communication between husband and wife
- Communications between physician and patient
- Communications between psychologist and client
- Communications between certified social worker and client
- Communications between dentist, nurse, podiatrist, or chiropractor and patient [CPLR Art. 45, SSL §384-b(3)(h)]

Other confidential communications, such as those between clergy and penitent, and attorney and client, remain privileged.

4. Where to Bring the Case

Jurisdiction

A cause of action to terminate parental rights on the basis of mental illness or mental retardation may be brought only in Family Court, which has exclusive jurisdiction over this kind of proceeding. [SSL §384-b (3)(d)]

Venue

The agency must initiate the TPR proceeding based on mental illness or mental retardation in accordance with the following requirements:

- If the child was placed in foster care pursuant to Family Court Act Article 10, the proceeding must originate in the Family Court in the county in which the proceeding pursuant to Family Court Act Article 10 was last heard.
 - The proceeding will be assigned, whenever practicable, to the judge who last heard such proceeding.
- If multiple proceedings are commenced to terminate parental rights about a child and one or more siblings or half-siblings in foster care with the same commissioner, all of these proceedings may be filed jointly in the Family Court in any county which last heard a proceeding under Family Court Act Article 10 regarding any of the children who are the subjects of the TPR proceedings.
 - The proceeding will be assigned, whenever practicable, to the judge who last heard such proceeding.

- The court hearing a TPR petition is responsible for finding out whether the child is under the jurisdiction of another family court pursuant to a child protective or foster care proceeding or continuation in out-of-home care as a result of a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If so, the court within which the most recent petition was filed must communicate with the other court, and both courts must tell the parties and the law guardian and give them an opportunity to present facts and legal argument, or to participate in the communication before the court issuing a decision. The SSL provides additional requirements to the courts under such circumstances, which the agency attorney will be know about.
- In any other case, the proceeding must originate in the county where either of the parents of the child live at the time of the filing of the petition, if known. If the parent's residence is not known, it must originate in the county in which the authorized agency has an office or in which the child lives at the time of the initiation of the proceeding.

When appointing an attorney for the child, the court will appoint an attorney for who has previously represented the child, to the extend possible.) [SSL 384-b(3)(c)]

5. Preparing The Petition

General Procedures

For a discussion of general procedures for filing a petition and additional general allegations required, see Chapter 6.

Required Allegations

The petition must allege sufficient facts to support each element of the cause of action, or it will be defective. Statements alleging facts sufficient to satisfy a mental illness or mental retardation cause of action require that dates be supplied that indicate the child has been in the care of the agency for at least one year immediately before the date on which the petition is filed in court. Facts must be alleged that:

- The parent(s) is presently and for the foreseeable future unable to provide proper and adequate care.
- The parent's mental illness and/or mental retardation is the reason for such inability.
- The child has been in the care of the agency for the required one-year period.
- The child would be in danger of becoming a neglected child if he or she were placed in or returned to the custody of the parent. [SSL §384-b (4)(c)]

6. Notifying the Respondents

Social Services Law Section 384-b outlines the notice procedures for all the causes of action that can be used to terminate parental rights outside of the adoption proceeding itself. *(See Chapter 6 for specific requirements of notice and service applicable to Family Court and for a discussion of the notice requirements for fathers of children born out of wedlock.)*

7. The Hearing

The hearing on a mental illness or mental retardation 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 (or, in the case of Native American children subject to ICWA, the standard is beyond a reasonable doubt), and if so:

- Whether the best interests of the child will be served by terminating the parent's rights and committing the custody and guardianship of the child to the agency for purposes of adoption.

The agency may present witnesses who will testify to facts relevant to the issue of the parent's mental illness or mental retardation and the parent's resultant inability to provide proper and adequate care for the child. Among the witnesses who may be presented are the following:

- **The case supervisor:** This witness will testify that the agency's case record is kept in the ordinary course of the agency's business. This testimony is essential if the agency desires to introduce the case record into evidence.
- **The child's caseworker:** Although the agency will 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.
- **Psychiatrist:** When there is an allegation of mental illness, the agency should present its own psychiatrist to prove the diagnosis and prognosis of parental mental illness.
- **Psychologist:** When there is an allegation of mental retardation, the agency should present a psychologist of its own choosing in addition to those appointed by the court.
- **The foster parent(s):** The foster parents may be needed by the agency to testify about the child's current condition and functioning, and they may be needed to give evidence about any special care needs of the child. They also may give testimony relative to the issue of the best interests of the child.
- **The child:** An attorney for the child will be assigned by the court to represent the child if independent legal representation is not available to the child. Although the child is not generally called as a witness at the hearing, if the child has relevant information to share with the court, the judge may speak to the child in the privacy of the judge's chambers. [FCA 249]

- **Other persons:** Other persons who can present evidence about either the parent's mental condition or the best interests of the child.

8. Consequences of the Determination

In a mental illness/mental retardation proceeding, in contrast to a permanent neglect proceeding, the statute does not specially provide for both a fact-finding and dispositional hearing. If the court finds that the agency has proved the elements sufficient to sustain a mental illness/mental retardation petition, the parental rights may be terminated and the custody and guardianship of the child committed to the agency for the purpose of adoption. Although the statute only requires a fact-finding hearing, the agency may find that the judge will decide to hold a dispositional hearing to determine the best interests of the child. It will be up to the agency's attorney to determine whether or not to challenge the judge's jurisdiction to hold a dispositional hearing in such cases.

E. SEVERE ABUSE AND REPEATED ABUSE

An order committing the guardianship and custody of a child pursuant to this section can be granted based on the finding that the parent(s) severely or repeatedly abused the child. When a court has determined that reasonable efforts to reunite the child with his or her parent(s) are not required, a petition to terminate parental rights on the ground of severe abuse may be filed immediately upon such determination. [SSL §384-b(4)(e)] Prior to 2005, there was a requirement that the child had to have been in foster care for the 12 months immediately before the hearing of the TPR based on the ground of severe or repeated abuse, but that requirement was eliminated by passage of the state's permanency legislation in 2005.

1. Severe Abuse

This ground is most commonly used when the child has been seriously injured by a parent. The approach must be planned carefully, starting with the correct legal pleadings at the time of the abuse petition but can result in a much quicker process to free the child for adoption whose parent remains an unsafe resource.³

A child is considered "severely abused" by his or her parent if:

- the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances showing a depraved indifference to human life, which result in serious physical injury to the child (as defined in subdivision ten of section 10.00 of the Penal Law); or
- the child has been found to be an abused child, as defined in section 1012(e)(iii) of the FCA, as a result of the parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in the sections of the Penal Law listed in SSL §384-b(4)(e). The corroboration requirements contained in the Penal Law do not apply to proceedings under this section; or

³ Center for Development of Human Services (2008). *Journey Through Adoption Training Curriculum*.

- the parent has been convicted of murder in the first degree, murder in the second degree, manslaughter in the first degree, or manslaughter in the second degree, as defined in the Penal Law, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible or another parent of the child; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; [**Note:** There is a spousal abuse defense when the convicted parent was the victim of abuse by the deceased parent and such abuse was a factor in causing the homicide.]
- the parent of such child has been convicted of criminal solicitation, conspiracy, or criminal facilitation, as defined in the Penal Law, for conspiring, soliciting, or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible;
- the parent has been convicted of assault in the second degree, assault in the first degree, or aggravated assault, upon a person less than eleven years old, as defined in the Penal Law, and the victim of any such crime was the child or another child of the parent or another child for whose care the parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or
- the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime listed in the bullets above; and
- the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. When a court has previously determined in accordance with the Social Services Law or the Family Court Act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency will not be required to demonstrate diligent efforts as set forth in SSL§384-b(8).

2. Repeated Abuse

A child is considered “repeatedly abused” by his or her parent if: [SSL §384-b(8)(b)]

- the child has been physically abused, as set forth in section 1012(e)(i) of the FCA, or sexually abused, as set forth in section 1012(e)(iii) of the FCA, by the parent or knowingly allowed to be sexually abused and, if sexually abused, the acts were a felony sex offense as set forth in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, and 130.80 of the Penal Law (does not require criminal convictions); and

- there was another abuse finding pursuant to section 1012(e)(i) or (iii) of the FCA OR a criminal conviction of felony sex offense within the last five years immediately preceding the initiation of the proceeding in which such abuse is found regarding the child or another child of the parent or another child for which the parent was legally responsible; and
- the agency has made diligent efforts to encourage and strengthen the parent/child relationship unless such efforts would have been detrimental to the child or unless the court issues a “no reasonable efforts” order.⁴ [SSL §384-b (8)(b)]

3. Legal Elements Common to Both Severe Abuse and Repeated Abuse

“Diligent efforts to encourage and strengthen the parental relationship”: An element common to termination based on either severe abuse or repeated abuse is the statutory requirement that, in addition to previous Family Court findings of parental abuse, the agency must be able to demonstrate it made diligent efforts to “encourage and strengthen the parental relationship.”

The act of child abuse is usually symptomatic of a deeply troubled parent clearly in need of supportive services to help overcome his or her problems. Just as in permanent neglect proceedings, the agency is mandated to work toward the reunification of the family. Although the statute does not specify what types of diligent agency efforts are required in these proceedings, the caseworker’s review of the diligent efforts mandated in a permanent neglect termination might be helpful (*see section C*).

In some cases, the caseworker may have strong negative feelings toward the parent(s) of the severely abused child. While this is understandable, the caseworker must still work to develop and implement an appropriate service plan to help the parent. Failure to do so will not be viewed favorably to the agency’s case. In most cases in which the parent has committed an act of felony sex offense or severe abuse, the District Attorney becomes involved, and the abusive parent may be charged with having committed a criminal offense. The court may issue an order of protection prohibiting the parent from having contact with the child or prohibiting unsupervised visits between the parent and child. The agency should obtain a copy of the order of protection and follow all of the provisions in the order.

If the parent is found guilty and sentenced to prison, he or she may be incarcerated during the child’s placement in foster care. This may impact the agency’s work with the parent during the period of imprisonment and may present a barrier to the possibility of terminating parental rights. In this situation or any other involving an incarcerated parent, the agency is still required to exert diligent efforts to assist, develop, and encourage a meaningful relationship between the parent and child, unless the agency seeks and receives a finding from the court that reasonable efforts are not required, thereby eliminating the need to demonstrate diligent efforts.

⁴ Center for Development of Human Services, Ibid.

There may be an order of protection issued by the court preventing the parent from having contact with the child.

“When such efforts will not be detrimental to the best interests of the child”:

The statutory mandate that the agency make diligent efforts to rehabilitate the parent and reunite the family is eliminated if such efforts will be contrary to the child’s best interests. The agency has the burden of proof in the termination proceeding to demonstrate that efforts would be detrimental to the best interests of the child. A decision to avoid diligent efforts must be carefully considered and should not be put into effect without consulting the agency attorney.

“Such efforts have been unsuccessful and are likely to be unsuccessful in the foreseeable future”: This element, common to both severe and repeated abuse causes of action, requires documentation of the parent’s past failure to respond to, or benefit from, the rehabilitative services aimed at treating the problems related to child abuse. The agency should be prepared to offer evidence that proves all of the following elements at the court hearing:

- The agency made available to the parent sufficient and appropriate services to help alleviate the causes of child abuse.
- The agency’s efforts to rehabilitate the parent have been unsuccessful because the parent has not cooperated or has not been able to obtain the parenting skills necessary to provide a safe return home of the child.
- Based on the parents’ refusal or inability to use and benefit from the supportive and rehabilitative services offered by the agency, it is unlikely that continued diligent efforts will be successful in the foreseeable future.

The last evidentiary burden of proof requires a subjective evaluation by the caseworker as to future expectations of parental improvement. Outside expert opinion from professionals such as psychiatrists and psychologists as to the parents’ limitations would be helpful. The depth of the trauma suffered by the child because of the abuse might also be a continuing barrier to the return home of the child and may be proved by expert testimony. Although there is no statutory definition as to what is meant by “the foreseeable future,” the period of time for requiring a “foreseeable future” prognosis can vary from one to three years, depending on the court.

“When a court has previously determined that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency will not be required to demonstrate diligent efforts.”

The agency is not required to demonstrate diligent efforts if a judge has previously determined that reasonable efforts to make it possible for a child to return safely to his or her home are not required.

Reasonable efforts to make it possible for the child to return safely home are *not* required (**see exception in boldface**) when:

- the parent has subjected the child to aggravated circumstances (*see discussion of aggravated circumstances earlier in this chapter*); or

- the parent has been convicted of:
 - murder in the first degree or murder in the second degree, as defined in Penal Law; or
 - manslaughter in the first degree or manslaughter in the second degree, as defined in the Penal Law; and
 - the victim was another child of the parent, and
 - the parent acted voluntarily in committing the crime; or
- the parent has been convicted of:
 - an attempt to commit any of the foregoing crimes; and
 - the victim or intended victim was the child or another child of the parent; or
- the parent has been convicted of:
 - criminal solicitation, conspiracy, or criminal facilitation, as defined by the Penal Law, for conspiring, soliciting, or facilitating any of the foregoing crimes; and
 - the victim or intended victim was the child or another child of the parent; or
- the parent has been convicted of:
 - assault in the first degree, assault in the second degree, aggravated assault upon a person less than eleven years old, as defined by the Penal Law; and
 - the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent; or
- The parent has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified above, and the victim of such offense was the child or another child of the parent; or
- The parental rights of the parent to a sibling of such child have been involuntarily terminated;
 - **unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future.** [FCA 352.2(2)(c), 754(2)(b), 1039-b and 1052(b)(i)(A), and SSL §358-a(3)(b)]

When a court has determined that reasonable efforts to reunite the child with his or her parent are not required, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of Subdivision 8 of this section may be filed immediately upon such determination.

The local DSS has the discretion to seek an order from Family Court ordering that reasonable efforts to make it possible for the child to return safely to his or her home are not required. It is important to note that such a determination by the court does not mean that the agency is prohibited from making such efforts. If the court makes a determination that no reasonable efforts are required, the agency should still assess what type of

services are appropriate for the family and provide such services without delaying the permanency plan for the child. When the court issues an order that reasonable efforts to reunify the child with his or her parent(s) are not required, the agency is still required to make reasonable efforts to finalize the child's permanency plan.

When a court makes a determination that reasonable efforts to reunite the family are not required, a TPR petition based on severe abuse when the parent has been convicted of one of the crimes listed in the statute may be filed immediately, and the fact-finding hearing can begin immediately. [SSL §384-b(4)(e)]

[FCA 352.2(2)(c), 754(2)(b), 1039-b and 1052(b)(i)(A), SSL §358-a (3)(b) and §384-b (8)(a)(iii)]

4. Legal Elements Related Only to the Severely Abused Child

Severe Physical Abuse [SSL §384-b (8)(a)(i)]

The child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the Penal Law.

“Found to have been an abused child”: If facts sufficient to sustain a petition alleging parental abuse have been established by clear and convincing evidence at a fact-finding hearing in an Article 10 abuse proceeding, the Family Court must enter an order finding that the child is an abused child and must state the grounds on which it based its findings.

This element requires that there has been a previous finding by the Family Court that the parent whose rights the agency seeks to terminate has abused the child. Section 1046(b) of the FCA provides for a court finding in an Article 10 proceeding using a clear and convincing standard.

“Reckless or intentional acts of the parent . . . evincing a depraved indifference”: The type of parental misconduct toward the child envisioned under this termination statute includes not only acts of wanton cruelty and brutality intentionally inflicted on the child by the parent but also those acts of gross negligence that show a depraved indifference to human life. Child protective workers are familiar with cases involving infants who have been severely beaten by a parent “because they cried incessantly,” or toddlers who were negligently bathed in near boiling tub water by a parent high on drugs, for example.

The statute also makes clear that intent to cause the injury to the child does not have to be proved. Evidence of reckless acts on the part of the parent indicating a callous disregard for the child's life will suffice if severe injury to the child is a direct result of the parent's reckless act.

When the court makes a finding of child abuse, it is required to specify in the order which definition of abuse set forth in Section 1012(e) of the FCA has been proved. For the purposes of severe abuse terminations, the court must find and specify in the order that an act of abuse as defined in Section 1012(e) of FCA has been established. It should be noted, however, that this definition of abuse and the definition of severe abuse

under SSL Section 384-b are dissimilar. To reconcile the definition of abuse in the FCA with the acts of severe abuse required in the termination statute, it is helpful if the judge not only sets forth that the court finds abuse under Section 1012(e)(i) of FCA but also makes additional findings that the serious injuries suffered by the abused child were a result of reckless or intentional acts by the parent, indicating a depraved indifference to human life. [FCA §1051(e)]

“Serious physical injury to the child”: A parent who, in a state of uncontrolled rage, throws a pair of scissors at a two-year-old and misses, has obviously committed an act that shows a depraved indifference to human life; but if no serious physical injury to the child resulted, this element would be absent and the court could not find the child to be severely abused. The statute incorporates the meaning of the words “serious physical injury” as they are defined in Section 10.00 of the Penal Code:

- 10.00 (10) “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.
- If the judge who finds that parental child abuse occurred in the Article 10 proceeding makes a further finding in the order to the effect that the abuse caused the child to suffer serious life-threatening injuries, the judge at the termination proceedings may take judicial notice of this fact. Under these circumstances the agency may be relieved of having to offer medical evidence to prove the element of the severity of the child’s pre-placement injuries.

Sexual Abuse [SSL §384-b(8)(a)(ii)]

The child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section 1012 of the Family Court Act, as a result of such parent’s acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, and 130.80 of the Penal Law.

“Found to have been an abused child”: If facts sufficient to sustain a petition alleging parental abuse have been established by clear and convincing evidence at a fact-finding hearing, the Family Court must enter an order finding that the child is an abused child and must state the grounds on which it based its findings.

This element requires that there has been a previous finding by the Family Court that the parent whose rights the agency seeks to terminate has abused the child.

“As defined in paragraph (iii) of subdivision (e) of section 1012 of the Family Court Act”: Section 1012(e)(iii) of the FCA defines an abused child based on acts that meet the definition of certain felony sex offenses. This provision therefore describes a sexually abused child. The TPR statute also requires that the respondent has committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75, and 130.80 of the Penal Law. The definitions of these offenses are reproduced below.

The definition of a abused child for the purposes of a TPR case based on severe abuse will permit a judicial finding of abuse against parents who, while they may not have inflicted the sexual abuse on the child themselves, allowed the abuse to occur. Also, for the purpose of terminating parental rights, the corroboration requirements contained in the Penal Law do not apply.

Parent Convicted of Certain Crimes: [SSL §384-b (8)(a)(iii)]

The third basis for a TPR proceeding based on the ground of severe abuse requires that the parent has been convicted of certain crimes listed in section 384-b (8)(a)(iii) of the SSL. It is also required that the victim of the crime was either the child, another child of the parent, or another child for whose care such parent is or has been legally responsible, depending on the crime. The crimes listed in section 384-b (8)(a)(iii) of the SSL are listed below.

The following sections are references to the Penal Law:

- 1) murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25 manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible or another parent of the child (note spousal abuse defense referenced above); or
- 2) an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or
- 3) criminal solicitation as defined in Article 100, conspiracy as defined in Article 105; or criminal facilitation as defined in Article 115 of the Penal Law for conspiring, soliciting, or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or
- 4) assault in the second degree, assault in the first degree, or aggravated assault upon a person less than eleven years old, as defined in the Penal Law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or
- 5) an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or
- 6) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified above.

5. Elements Related Only to Repeated Abuse

Found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section 1012 of the Family Court Act, . . . or (B) as defined in paragraph (iii) of subdivision (e) of section 1012 of the Family Court Act.

A necessary element in any termination proceeding alleging repeated abuse is that the Family Court made previous findings that acts of parental abuse under section 1012 (e) (i) or (iii) of the FCA have taken place. These sections define an abused child as a child less than 18 years of age whose parent:

- inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- commits, or allows to be committed an offense against such child defined in Article 130 of the Penal Law; allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the Penal Law; commits any of the acts described in section 255.25 of the Penal Law; or allows such child to engage in acts or conduct described in Article 263 of the Penal Law provided, however, that (a) the corroboration requirements contained in the Penal Law and (b) the age requirement for the application of Article 263 of the FCA does not apply to proceedings under Article 10 of the FCA. [FCA 1012(e)(i) and (iii)].

In defining an abused child for the purpose of repeated abuse termination, section 384-b of the SSL incorporates the passive aspect of the definition of abuse which is set forth in section 1012(e)(i) or (iii) of the FCA. This definition will permit a judicial finding of abuse against parents who, while they may not have inflicted the injuries on the child themselves, allowed the injuries to be inflicted. For example, a mother who is aware that her infant is being severely beaten by her boyfriend, but does nothing to prevent the child from being severely hurt, may be found an abusive parent despite the fact that she did not directly inflict the child's injuries.

For the purpose of terminating parental rights on the ground of repeated abuse, evidence that there were previous court findings based on clear and convincing evidence of sexual abuse against the parents will fulfill the statutory prerequisite; provided, however, that the sex offense must fall within the parameters of one of the definitions contained in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the Penal Law and the corroboration requirements contained in the Penal Law do not apply to such proceedings. (*See page 5-45 for the definitions of these offenses.*) [SSL §384-b(8)(b)(i)]

If the court makes a finding of sexual abuse under paragraph (iii) of Section 1012 (e), it must make a further finding of the specific sex offense committed or defined in Article 130 of the Penal Law [FCA Section 1051 (e)].

The child or another child under the parents' care has been previously found within the five years immediately preceding the initiation of the second abuse proceeding to be an abused child as a result of such parent's acts or the parent was convicted of one of the specified sex offenses against the child, a sibling of the child, or another child for whose care the parent is or has been legally responsible.

This element requires proof that two separate acts of child abuse have taken place no more than five years apart. The first act of child abuse must have resulted in a court finding of abuse under either FCA section 1012 (e) (i) or sexual abuse under (iii)* or the conviction of the parent for one of the specified felony sex offenses. The later act of abuse must have resulted in a court finding of abuse. The second act of abuse does not necessarily have to have been committed against the same child who was previously injured or sexually abused. As long as the care of both child victims was the legal responsibility of the abusing parent(s), this element will be satisfied. Obviously, if the same child was the target of parental child abuse in both proceedings, the statutory requirement is met.

6. Burden of Proof in Severe Abuse or Repeated Abuse Cases

In a severe abuse or repeated abuse case, the agency is required to prove its case by “clear and convincing evidence” at both the fact-finding and dispositional hearings. (**Note:** For Native American children subject to the federal ICWA, the standard is beyond a reasonable doubt.)

Even though the petitioner at the FCA Article 10 abuse proceeding must prove its case only by a preponderance of the evidence, under certain circumstances, abuse may be proven by clear and convincing evidence. Depending on the situation, an abuse finding at the FCA Article 10 fact-finding based on clear and convincing evidence may be used in the TPR proceeding to meet the burden of proving severe or repeated abuse by clear and convincing evidence.

7. Where to Bring the Case

Jurisdiction

Only Family Court has jurisdiction to entertain a severe abuse or repeated abuse cause of action.

Venue

A TPR proceeding based on severe or repeated abuse must originate in accordance with the following provisions:

If the child was placed in foster care pursuant to Article 10 of the FCA, the proceeding must originate in the Family Court in the county in which the proceeding pursuant to Article 10 of the FCA was last heard. (The proceeding will be assigned, whenever practicable, to the judge who last heard such proceeding.)

If multiple proceedings are commenced under section 384-b of the SSL about a child and one or more siblings or half-siblings placed in foster care with the same commissioner, all of the proceedings may be commenced jointly in the Family Court in any county which last heard a proceeding under Article 10 of the FCA regarding any of the children who are the subjects of the TPR proceedings. (The proceeding is to be assigned, whenever practicable, to the judge who last heard such proceeding.)

The court hearing a petition to terminate parental rights is responsible for finding out whether the child is under the jurisdiction of another family court pursuant to a child protective or foster care proceeding or continuation in out-of-home care as a result of a

permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If so, the court within which the most recent petition was filed must communicate with the other court and both courts must tell the parties and the law guardian and give them an opportunity to present facts and legal argument, or to participate in the communication before the court issuing a decision. The SSL provides additional requirements to the courts under such circumstances, which the agency attorney will know about.

In any other case, the proceeding must originate in the county when either of the parents of the child live at the time of the filing of the petition, if known, or, if their residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child lives at the time of the initiation of the proceeding.

To the extent possible, the court will, when appointing an attorney for the child, appoint a attorney who has previously represented the child. [SSL §384-b(3)(c)]

8. Preparing the Petition

General Procedures

See Chapter 6, Section B for a discussion of the general procedures for preparing a TPR petition.

Required Allegations

The petition to initiate a proceeding based on either severe or repeated abuse must contain allegations sufficient to establish each element of the cause of action specified by law as follows:

Statements alleging facts needed to satisfy both a severe abuse and repeated abuse cause of action:

- The child must have been found to be an abused child by the Family Court unless the case is based on the previous conviction of the parent for one of the enumerated felony sex offenses.
- The agency must be able to demonstrate that it made diligent efforts to encourage and strengthen the parental relationship including efforts to rehabilitate the respondent when diligent efforts will not be detrimental to the child's best interests. If the court has made a previous finding that reasonable efforts are not required, the agency is then not required to demonstrate diligent efforts. The agency will need to produce the court order with the determination that reasonable efforts are not required.

Additional allegations needed only for severe abuse:

- that the reckless or intentional acts of the parent resulted in serious physical injury to the child; or
- that the parent committed or knowingly allowed to be committed one of the felony sex offenses enumerated in section 384-b(8)(a)(ii) of the SSL; or

- that the parent was convicted of one of the crimes enumerated in section 384-b(8)(a)(iii) of the SSL and either the victim was the child, another child of the parent, or another child for whose care the parent is or has been legally responsible.

Additional allegations needed only for repeated abuse:

- that the child has been found to be an abused child as defined in the Family Court Act for one of the felony sex offenses enumerated in section 383-b(8)(b) of the SSL and that this child or any other child of the same parent has been found to be an abused child within the previous five years; or
- that the child has been found to be an abused child as defined in the Family Court Act for one of the felony sex offenses enumerated in section 383-b(8)(b) of the SSL and that the parent was convicted for one of the enumerated felony sex offenses against this child, a sibling of the child, or another child for whose care the parent is or has been legally responsible, within the previous five years; or
- that the child has been found to be an abused child as a result of the parent's acts. The definition of "abused child" is contained in FCA 1012(e).

The child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, However, in the case of a finding of abuse the respondent must have committed or knowingly allowed to be committed a felony sex offense against the child, a sibling of the child, or another child for whose care such parent is or has been legally responsible, within the five-year period immediately preceding the initiating of the proceeding in which abuse is found.

9. Notifying the Respondents

The First Required Warning

Sections 1035 and 1037 of the FCA provide that in any proceeding to determine child abuse, the summons or warrant must contain a statement to the respondent parent clearly marked on the face of the summons or warrant that the abuse proceeding may lead to a proceeding for the commitment of guardianship and custody of the child to the social services commissioner or foster parent and the termination of parental rights. Also, section 1031 of the FCA requires that the FCA Article 10 petition alleging abuse must contain a notice in conspicuous print that a fact-finding that a child is severely or repeatedly abused as defined in section 384-b(8) of the SSL (termination of parental rights) by clear and convincing evidence, could constitute a basis to terminate parental rights in a proceeding under section 384-b of the SSL.

The Second Required Warning

Section 1033-b of the FCA requires that at the initial appearance at the abuse case, the court must inquire of the child protective agency whether such agency intends to

prove that the child is a severely or repeatedly abused child as defined in section 384-b(8) of the SSL by clear and convincing evidence. When the agency advises the court that it intends to submit such proof, the court must so advise the respondent.

The Third Required Warning

If abuse or a felony sex offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, and 130.70 of the Penal Law is found to have been committed by the parent, at the conclusion of the dispositional hearing, before the court enters an order either returning the child home, suspending judgment, placing the child in the care of the agency, releasing the child to the parent under agency supervision, or making an order of protection, the judge must first advise the parent that any subsequent finding of child abuse or felony sex offense for one of the enumerated offenses may result in the commitment of the guardianship and custody of the child or another child to the social services commissioner, the foster parent, or the relative as a result of a repeated abuse termination proceeding (section 1052 (c) of FCA).

The Fourth Required Warning

The dispositional order in all cases of abuse or felony sex offense against a child must contain a statement that any subsequent adjudication of child abuse or felony sex offense may result in the commitment of the guardianship and custody of the child or another child to the social services commissioner or to the foster parent pursuant to section 384-b of the SSL.

Importance of the Warnings

A termination proceeding grounded in severe abuse may be vulnerable if the summons or warrant served on the respondent parent giving notice of the abuse proceeding does not contain a clearly marked warning to the effect that the abuse proceeding could lead to a termination of parental rights.

It is essential that caseworkers understand the termination statutes and work cooperatively with their attorneys to make sure that the required warnings are given to parents. This is a good example of the fact that the work done earlier in a case, usually by a different caseworker, can have a direct effect on whether work done later in a case is successful.

When the Legislature increased the existing statutory termination grounds of abandonment, permanent neglect, and mental illness and retardation by adding severe abuse and repeated abuse, it enacted certain due process safeguards into these more recently created causes of action to protect the parents' rights.

10. The Hearing

Severe abuse and repeated abuse proceedings are divided into a fact-finding hearing and a dispositional hearing.

Fact-finding Hearing

Just as in permanent neglect proceedings, the fact-finding stage requires that the petitioning agency prove all allegations included in its petition by clear and convincing

evidence. If the agency is unable to prove the necessary elements, the case is ended and the petition will be dismissed. On the other hand, if the court determines that the child has been severely abused or repeatedly abused by his or 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.

Dispositional Hearing

In a dispositional hearing, the evidence that is introduced related to severe abuse or repeated abuse varies from the evidence that may be offered in a permanent neglect dispositional hearing. In the latter, as discussed, the evidence only has to be material and relevant, and written reports, psychological or psychiatric evaluations, and expert opinions may be received in evidence to aid the court in deciding what disposition would be in the child's best interests. Contrary to this, at a severe abuse or repeated abuse dispositional hearing, the evidence must be not only 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 personally takes the stand, so that he or she can be examined as a witness. For the purposes of terminating parental rights on the grounds of severe abuse or repeated abuse, the same standard of admissible evidence is required at both the fact-finding and dispositional stages: material, relevant, and competent evidence.

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 following:

- **The case supervisor:** This witness will testify that the agency's case record is kept in the ordinary course of the agency's business. This testimony is essential if the agency desires to introduce the case record into evidence.
- **The child's caseworker:** The worker will answer questions about the child and the parent, questions which may vary from case to case, but which normally will include inquiries 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; i.e., the reasons for determination that these efforts would be detrimental to the best interests of the child.
- **The foster parent(s):** The foster parents may be needed by the agency to testify to the child's current condition and functioning. They may also give evidence regarding any special care needs of the child.

- **The child:** Generally the child is not called as a witness at the hearing. An attorney must be assigned by the court to represent the child. If the child has relevant information to share with the court, many judges prefer to talk informally with the child in the judge's chambers.
- **Other persons who have relevant information:** the agency attorney will call these witnesses to introduce particular relevant evidence.

11. Consequences of the Determination

Dispositional Alternatives Available to the Court

The statute provides only two dispositional alternatives if the court makes a finding that the child was severely or repeatedly abused. The court must either enter an order suspending judgment or committing the custody and guardianship of the child to the petitioning agency.

Suspended Judgment

If the court determines to suspend judgment, it may set out certain rules of conduct for the parent to follow. The court may suspend judgment upon a finding, based on clear and convincing evidence, that the child's best interests require such a finding. The period of time of a suspended judgment is for a maximum of one year; however, if the court finds exceptional circumstances exist at the conclusion of that period of time, it may extend the suspended judgment for one more year. The conditions of a suspended judgment are the same as those discussed under permanent neglect dispositions (*See section C.7*).

Commitment of the Guardianship and Custody of the Child to the Agency

This order terminates parental rights and transfers guardianship and custody to the agency, including the right to consent to the child's adoption.

F. DEATH OF THE PARENT(S)

An order committing the guardianship and custody of a child on the basis of the death of the child's parent may be granted in the following situations:

- Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed. [SSL Section 384-b(4)(a)]
- In cases when the parents are deceased, the law requires that before custody and guardianship is awarded to the petitioner, the court must determine that the best interests of the child will be promoted by such termination.

Note: The utility of the ground of death of a parent or parents as a basis to free a child for adoption was significantly diminished by the enactment of section 113 of Domestic Relations Law (DRL).

Domestic Relations Law Section 113(1) provides: An authorized agency may consent to the adoption of a minor whose custody and guardianship has been transferred

to the agency. An authorized agency may also consent to the adoption of a minor whose care and custody has been transferred to the agency pursuant to section 1055 of the FCA or section 384-a of the SSL when such child's parents are both deceased, or when one parent is deceased and the other parent is not a person entitled to notice.

Section 113(1) of the DRL allows an agency to consent to the adoption of the child if either:

- the child was placed by the court pursuant to section 1055 of the FCA or voluntarily placed by a parent or guardian pursuant to section 384-a of the SSL, and both parents are deceased; or
- one parent is deceased and the other parent's consent to the adoption is not required nor is that parent the father of a child born out-of-wedlock who is entitled to notice of the adoption pursuant to section 111-a of the DRL which concerns notice in certain proceedings to fathers of children born out-of-wedlock.

If an agency with care and custody of a child is allowed to consent to the adoption of the child in accordance with one of the above provisions, it is not necessary to terminate parental rights before the adoption proceeding is initiated. The agency should secure satisfactory documentation of the death of the parent, such as the certified death certificate.

G. EXPEDITED ADOPTIONS

The SSL and the FCA allow procedures intended to expedite the adoption of children from foster care. These procedures permit the scheduling of an adoption hearing at the time an authorized agency assumes guardianship and custody of the child through either through TPR, a judicial surrender, or approval of an extra-judicial surrender.

The law requires that the judge at the termination or surrender proceeding inquire whether there is any person interested in adopting the child, including foster parents, relatives, or any other person(s). If so, the judge must accept the petition for adoption along with the home study. The home study must be completed by an authorized agency or a disinterested party, as defined in law. The court must then establish a schedule for completion of any inquiries and investigations necessary to review the adoption of the child and also set a schedule for completion of the adoption. [SSL §§383-c and 384-b(11)]

To further expedite the process, state law requires that the termination and the adoption proceedings be conducted in the same Family Court that heard the most recent Article 10 proceeding and, when practicable, before the same judge. [DRL §113(3)(i)] By requiring the court and the judge familiar with the child's case to conduct the termination proceeding, accept the adoption petition, and set a schedule for completion of the adoption, it is expected that the process will be timely. Also, to the extent possible, the court must appoint an attorney for the child who previously represented the child. [SSL §384-b(3)(c)]

1. Cases Appropriate for Expedited Adoption

Procedures for expedited adoptions will not apply to all termination cases. There are a number of factors the agency should consider in deciding whether or not an adoption case should be expedited. Cases to be considered for the expedited adoption process should meet all of the following criteria:

- the parents have indicated an interest in pursuing a judicial surrender of their child in foster care; and
- the foster parent or approved relative has been informed of the petition to terminate parental rights and has indicated an interest in adopting the child; and
- the child has lived with the foster parents or relative for at least six months; and
- the home study has been completed and the parent or relative is approved as the prospective adoptive parent for the child; and
- there is no indication that the parent will file an appeal or that an appeal will be filed on their behalf.

2. Calendaring the Adoption Proceeding

An adoption petition can be filed with the court when a termination proceeding is pending. The petition and supporting documentation will not be submitted to the judge of the termination proceeding until the fact finding of the termination is concluded. [DRL 112(8)]

The adoption proceeding will be considered filed when the clerk of the court is in receipt of all documents required by law. Included in the documents that must be presented to the court is a schedule prepared by the agency that contains facts, if any, which render it unnecessary for the consent of either or both of the parents to consent to the adoption, such as the securing of a surrender or the TPR. An affidavit of readiness from the petitioner's attorney must be included with the documents. Once the necessary documents are filed, the court must schedule a proceeding, within established time frames, to determine if there is adequate basis for approving the adoption. If so, the appearance of the adoptive parents and the child for approval of the adoption must be calendared. If there is not adequate basis for approving the adoption, additional hearings or appearances must be directed. [DRL 112-a]

3. Early Initiation of Adoption Services

For cases in which the adoption is to be expedited, the agency must complete certain adoption-related activities before the child is freed for adoption. These activities may be conducted before the case is assigned to the agency's adoption unit, depending upon local protocol. Since this is an expedited process, most of the following requirements for adoption, as well as approval of the prospective parents to adopt the child, must be completed or in the process of being completed when the attorney serves notice to the prospective adoptive parents that an adoption proceeding may be scheduled.

- **Home Study**—to identify and obtain information that is lacking, and to identify areas of family functioning that may need further strengthening. Judges prefer an assessment completed within the last year.

There is a recommended, but not required, template for documenting the home study on the OCFS website titled the Comprehensive Adoption Report (CAR). The CAR is used by many, but not all local districts and agencies to document the information learned during the home study and to provide it to the court. The CAR is designed to serve as a statewide model for the content and level of detailed information an agency should submit to the court as part of the Adoption Packet. The CAR offers a format and logical flow that, if properly used, should result in a thorough, relevant, and up-to-date report.

The CAR can be accessed at <http://intra.ocfs.state.ny.us/car>

For additional information about the CAR, please see OCFS Informational Letter titled Comprehensive Adoption Report (CAR) (07-OCFS-INF-02), available on the OCFS website under Policy Directives from 2007.

- **Medical Report**—report from a physician about the health of each member of the household (should contain any medical changes within the last year).
- **Marital Status**—if married, proof of marriage; if separated and apart from their spouse, either proof of a legal separation agreement, or an affidavit executed by the prospective adoptive parent attesting that he or she has been or will be living separate and apart from his or her spouse for a period of three years or more before the commencement of the adoption.
- **Evidence of Employment**—if applicable, documentation of employment indicating occupation and approximate salary for each applicant (e.g., W-2 form or wage stub).
- **Subsidy**—application for subsidy due from the prospective adoptive parent before the child is freed. (*See Chapter 12 for information about subsidy.*)
- **Results of the Criminal History Record Check**—when the prospective adoptive parent applies for approval as an adoptive parent, the authorized agency must perform a criminal history record check through OCFS with the Division of Criminal Justice Services and the FBI regarding the prospective adoptive parents and each person over the age of 18 who is currently living in the home. The prospective adoptive parents, and each person over the age of 18 who currently lives in the home, must be fingerprinted for this purpose. Such review includes notification of any subsequent arrests in New York State. The agency should compile the results of such checks including any safety assessment completed by the agency if the adoptive parents and/or household members have a criminal history. [SSL §378-a(2);18 NYCRR 421.27]

- **SCR Database Check**—the agency must submit a clearance form to the OCFS State Central Register for Child Abuse and Maltreatment (SCR) and receive back a copy of the response stating whether the prospective parent was found to be a subject in an indicated child abuse or maltreatment report. To avoid delays, an inquiry should be made as early in the process as possible.

If an adoption petition is filed with the court when a termination proceeding is pending, the court clerk must accept the adoption petition for filing and processing, and must ask OCFS whether the adoptive parents is the subject of an indicated report of child abuse or maltreatment. The petition and supporting documentation will not be submitted to the judge of the termination proceeding until the fact finding of the termination proceeding is concluded (Section 112 of the DRL). See 93-INF-43 on the OCFS website under Policy Directives from 1993.

- **Length of Adoptive Placement**—verification of the period of time the child has lived with the prospective adoptive parent(s).
- **Information on the Child and Birth Parents**—make sure that the medical, religious and placement information about the child, as well as the medical, religious and information about the heritage of the birth parents and other information required by section 112 of the DRL, is available in the case record, and is provided to the prospective adoptive parents.

4. Services that Must be Provided to Prospective Adoptive Parents

When an adoption case can be expedited by using the provisions in law, state law requires the attorney for the agency to serve notice to the parent(s) approved by the agency to adopt the child, that the order approving the surrender or transferring custody and guardianship of the child has been entered and that the prospective adoptive parent(s) can commence an adoption proceeding. In addition, the agency must advise the parent(s) of the procedural steps necessary to complete the adoption in accordance with OCFS regulations. [SSL §383-c(8); §384-b(10); 18 NYCRR 421.19(i)(5)]



Note: It is important that the parents' attorney be included in this process. According to some judges, in too many cases, the petition is incomplete at the time of filing which results in extended delays to complete the filing, or will result in dismissal of the petition. Adoptive parents should be advised that the adoption process requires that certain specific procedural and substantive steps must be taken and therefore, they should be encouraged to hire an attorney who is familiar with and has worked on agency adoptions.

5. Subsidy Application Prior to Freeing

To expedite the adoption process, the law allows for, but does not require, the filing of an application for adoption subsidy before the commitment of the guardianship and custody of the child to the authorized agency. To avoid delay in the process, the

adoption subsidy application should be completed by the prospective adoptive parents as soon as possible and submitted for approval with all the necessary documentation. The agency should indicate that the child is not yet freed for adoption, but that a termination proceeding is pending and that an application for adoption has been filed with the clerk of the court or will be filed at the conclusion of the dispositional hearing or at the surrender.

6. Technical Difficulties with Expedited Adoptions

Caseworkers should be aware that there have been some technical difficulties with expedited adoptions. These include:

- Court order on disposition of the TPR is not done and filed on a timely basis.
- The need to wait at least 30 days to see if a Notice of Appeal is filed; the adoption petition must contain an affidavit that no appeal has been filed.
- The agency will not sign a consent to adoption until 30 days after service of the order on the parents as there could be an appeal. The regulations do not allow the agency to sign the consent if an appeal is pending and law requires the court to have agency consent.
- An agency may be structured so that when child is freed, the case is transferred to a new caseworker to do the adoption. This transfer process can take a long time and sometimes an agency will not sign or take further until the transfer is complete.

Chapter Six

Role of the Caseworker in Termination Proceedings

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A. CASEWORKER, AGENCY ATTORNEY, AND JUDGE: Interrelationships

1. Caseworker and Attorney

Any termination proceeding will be a joint effort by the caseworker assigned to the child's case and the agency attorney. The caseworker and agency attorney each has a distinct role to play, although their duties will overlap to some extent. The caseworker and the attorney should each recognize the other's particular expertise and make every effort to support and respect, but not interfere, in the other's realm. Continuing consultation and cooperation between these professionals is essential, with disagreements handled in a professional manner, from the time of the initial casework decision to seek termination of parental rights, through the final disposition of the case.

Caseworker Role

While the main responsibilities of the caseworker lie in preliminary areas of case recording, case management, and internal review, the caseworker has an important role in case preparation as well. In addition, the caseworker can be an invaluable aid to the agency attorney from the initial presentation of an adequate set of facts, through obtaining necessary additional evidence, to helping to keep documents and other papers organized and handy during the hearing itself.

The most important point to remember is that both the caseworker and the attorney are working toward the same goal—the presentation of a successful termination case resulting in freeing the child for adoption.

Attorney Role

After the attorney has studied the facts of the case as presented by the caseworker and decided that there is sufficient evidence to support a termination proceeding on one or more grounds, the attorney then has the following responsibilities:

- determining the court in which the proceeding is to be initiated;
- determining the statutory grounds to be invoked;
- deciding on the method of notifying the respondent;
- determining the witnesses to be called and the evidence to be offered.

The attorney will also be responsible for preparing the caseworker, often the primary witness, to give testimony in court. In this context the attorney normally will tell the caseworker what questions he or she plans to ask and prepare the caseworker for cross-examination by opposing counsel. Often, however, it is difficult for the attorney to spend a large amount of time in this phase of case preparation. The caseworker, however, can do a great deal to prepare for the hearing on his or her own.

2. Role of the Judge and Relationship with the Caseworker

The respective professional roles of the caseworker and the judge are significantly different, and potential misunderstandings can be reduced by being continually mindful of this fact. The caseworker, continually involved in the subjective decisions demanded by social work, sometimes expects a subjective response from the judge, whom he or she perceives as also committed to protecting the welfare of children. The judge, on the other hand, may expect more factual information from the caseworker rather than an emphasis on feelings or general, subjective statements. Given the perspectives of the two professions, both of these reactions are understandable, but they can be an obstacle to a comfortable and productive working relationship.

It is important for caseworkers to understand that determining the best interests of the child is not the only duty of a judge. In a Family Court proceeding, the judge is the trier of fact and interpreter of the law, as well as the person responsible for making a decision that will have enormous impact on the lives of the child and his or her parents. During the conduct of the trial the judge is responsible not only for making decisions concerning the facts of the case, but also for ensuring that the trial is conducted fairly. He or she must make judgments about the admissibility of evidence, be concerned about the best interests of the child, protect the constitutional rights of the child's parents and determine whether the petitioning agency has met its burden of proof.

Certain judges have greater knowledge about social work practice and procedures than others. Caseworkers should familiarize themselves with the roles and responsibilities of the judge, and with the most fundamental tenets and rules of law that the judge must uphold. With increased knowledge, the caseworker will be able to communicate more effectively with this key participant in the termination proceeding.

B. PROCEDURES AND CONSIDERATIONS FOR TERMINATION PROCEEDINGS

When the caseworker, in consultation with his or her supervisor, has determined that the facts of a case call for proceeding to terminate parental rights, or the court has ordered that a petition be filed, the caseworker should make an appointment with the agency's attorney to discuss the case and the possibility of initiating a termination proceeding. The attorney will review the nature and amount of information that the caseworker has available to support a termination proceeding and may ask that additional or different information be supplied. The caseworker and attorney should work together in the evidence-gathering process in order to present the most complete and thorough case in court.

1. Preparing for the Trial

Deciding on the Grounds for the Petition

The specific facts of the case dictate the grounds that may be used to terminate parental rights. Often a particular factual situation will seem to indicate that more than one of the grounds for termination is appropriate (*see Chapter 5*). There are cases in which the facts include a gray line between a mental illness/mental retardation cause of action and a permanent neglect cause. In the case of a permanent neglect proceeding, for example, the caseworker may be unsure whether the parent has had any contacts with the child, or when the parent has had one seemingly insubstantial contact with the child. There is no legal restriction in this situation against alleging multiple grounds, and it is wise practice to allege in the petition all grounds that may be supported by the evidence.

Regardless of the care taken in preparation of the case, unanticipated evidence may be brought forth at the trial that will support one cause of action rather than another. Supportive information may be found in documentation in the case's progress notes and/or family assessment and service plans regarding lack of progress in achieving the discharge of a child from foster care to his/her parents.

It may also be necessary to proceed with two different causes of action when seeking to terminate the parental rights of more than one parent. For example, one parent may have clearly abandoned the child, while permanent neglect or mental illness/mental retardation grounds may be more appropriately applied to the other parent. The agency can file against both parents in separate proceedings or in a single proceeding, even if it is alleging different causes of action against each of them.

Separate proceedings: To free the child for adoption, it is not necessary to terminate the parental rights of both parents at the same time. For example, the social services district may intend to initiate proceedings to terminate the rights of both the mother and father of a particular child, using the ground of abandonment for the father and mental retardation for the mother (whose parental rights were terminated for a sibling of the child based on the ground of mental retardation). Since the child must be in foster care for a minimum of one year before a parent's rights can be terminated on the ground of mental retardation, the local district might initiate the TPR proceeding against the father who has abandoned the child for a period of six months, and later, after the child has been in foster care for one year, initiate the TPR proceeding against the mother. In some cases, one parent may have died, or chosen to voluntarily surrender the child for adoption, while the other parent may have his or her parental rights terminated in a judicial proceeding. Any combination of these means will effectively free the child.

The caseworker should be cautioned, however, against precipitously initiating a proceeding to terminate the rights of only one of the child's parents, even when sufficient grounds exist. Unless there is a strong likelihood that the remaining parent's rights will also eventually be terminated or the parent will surrender the child, thereby freeing the child completely for adoption, the action to terminate the rights of only one parent may be counterproductive. If it is expected that the other parent will continue to be a resource for the child, the caseworker should give careful consideration to the

overall picture, including the relationship between the parents, before deciding to seek termination of just one parent's rights. In all cases, the safety of the child must be the paramount concern.

2. Preparing the Termination of Parental Rights (TPR) Petition

If the agency's attorney feels that the facts of the case will support a termination proceeding, a petition will need to be prepared and filed with the court to initiate the proceeding. As the petition is a legal document, the ultimate responsibility for its preparation rests with the attorney. Often, the agency attorney will ask the caseworker to review the petition. The following guidelines are intended to help caseworkers with this task; **they are not intended to substitute for the lawyer's own guidelines and legal judgment.** (*See Chapter 7 for more information on petitions for specific causes of action.*)

The TPR petition must contain the following basic facts about the child's placement and the parents' status:

- The name and address of the petitioning agency.
- The name, birth date, and birthplace of the child or children.
- The names and addresses of the child's birth parents. (If the child was born out-of-wedlock, the name and last known address of the non-marital father if he is entitled to be given notice under the criteria outlined in SSL §384-c. If a parent's whereabouts is unknown, this fact may be stated.)
- The date on, and manner in which, the child was initially placed in the care and custody of the agency. It should be stated whether the child came into placement through a voluntary surrender, a voluntary placement agreement, or court commitment, and the reasons for the placement should be set forth briefly.
- The present placement status of the child or children including the level of placement (e.g., foster home, group home or residential setting) and agency caring for the child.

Statements demonstrating validity of petition: The petition must include statements of sufficient facts to support the cause of action, or it will be considered defective. The following statements, or required allegations, must be addressed in the petition. The content will differ, depending on the specifics of the case:

- No previous application has been made for the relief requested (for example, termination of parental rights on the grounds of abandonment); or if such application has been made, there is a statement of the relevant facts surrounding the disposition of that application.
- Prayer (request) for relief asking that the court commit the guardianship and custody of the child to the authorized agency for purposes of adoption, pursuant to SSL §384-b.



Note: “Prayer for relief” is a common legal term used in many different types of courts and many different types of legal proceedings. It simply refers to what the plaintiff or petitioner is asking of the court. For example, in a civil lawsuit, the plaintiff or petitioner may make a prayer of relief to the court asking for monetary damages. In termination of parental rights proceedings, a prayer for relief, as described in the bullet above, is included in the petition.

3. Notifying the Respondent

Under the requirements of due process, it is necessary to give all respondents a legal action notice well in advance of the proceeding. Normally it is the function of the agency’s attorney to make sure that the summons is served properly and within the time required. Caseworkers are not usually directly involved with this process other than providing addresses of respondents to the agency attorney; however, a brief summary is provided so caseworkers will be aware of the requirements of the process and time frames involved.

Notice is given to the respondent by serving him or her with a legal document called a “citation” in the Surrogate’s Court and a “summons” in the Family Court. If the parent’s location is known, the summons or citation and the petition should be served on him or her personally by a process server or another person supplied by the petitioner (the agency). The process server is required by law to submit a sworn affidavit as proof of personal service.

The Notice informs the parent that legal action is pending and gives the hearing date. The summons or citation requires the parent’s attendance at court on a specific date, called the “return date,” to answer the petition. In addition, any notice of a termination proceeding is required to:

- inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons; and
- inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to counsel assigned by the court if they are financially unable to obtain counsel.

The summons and petition must be served on the parent at least 20 days before the time he or she must appear in Family Court, or 10 days in Surrogate’s Court. The court may extend this time frame if requested to do so by the parent(s).

Substituted service: When the agency cannot make personal service on the parent after a reasonable effort, the judge may order a form of substituted service, or service by publication. Substituted service may include such methods as service by certified or registered mail to the last known address, or delivery to a suitable person at the parent’s residence or business. Service by publication requires publishing portions of the petition in a newspaper. When a judge orders notice of a proceeding to terminate parental rights by publication, “in no event shall the whole petition be published” (Family Court Act, Section 617). The law further specifies that the notice by publication must state:

- the date, time and purpose of the proceeding;
- that if the summoned person fails to appear, all his or her parental rights to the child may be terminated; and
- that the respondent's failure to appear shall constitute a denial of his or her interest in the child, which may result, without further notice, in the transfer or commitment of the child's care, custody, or guardianship, or in the child's adoption, in this or any subsequent proceeding in which such care, custody, or guardianship or adoption may be at issue. Note: if substituted service is ordered by the Surrogate's Court, service must be made at least thirty days before the return date. (Section 308 of the Surrogate's Court Procedure Act).

Section 384-c of the Social Services Law provides for service of notice to a putative father who is a notice father only. If personal service cannot be made to the putative father's last known address with reasonable effort, notice may be sent by registered or certified mail to his last known address at least 20 days before the hearing. No previous court order is required, and the court may not order service by publication in such cases.

4. Diligent Search to Locate a Missing Parent

Because substitute service or notification by publication (described above) is less reliable than other methods of notification, certain safeguards have been established so that it is used only when the court finds that service can not be made by another prescribed method with due diligence. Consequently, there is a requirement that the agency make a "diligent search" for the parent so he or she can be served.

Diligent searches for parents should be done when a child first comes to the attention of the child welfare system and the results documented. It may be necessary to repeat this process periodically during the case and it will be necessary at the time consideration is being given to starting a proceeding to termination parental rights. It is important to conduct these efforts in a concentrated period of time so that failure to locate the parent as of a given date is current.

Before the court will order service by publication, it must be convinced that the agency has made every reasonable effort to locate the parent. These attempts should be documented in an affidavit (a sworn statement) by the caseworker, which is attached to the petition. Because courts sometimes vary regarding the degree of diligent effort required to ascertain a parent's whereabouts, the caseworker should attempt to check with multiple sources of information and document the date of each attempt and the results. The Internet offers many easily accessed sources of information to aid in locating someone. One such tool, the Family Finding Search Tool, sponsored by the California Permanency for Youth Project, is available at <http://www.cpy.org/search-tools.html>

Caseworkers should talk with their supervisor about the most common sources of information used in their agency.

The caseworker should begin by carefully reviewing the case record to identify previous attempts to locate a parent, the steps taken, and the results. Some of this

information may provide clues about where to again look for a parent. Here are several ways to determine a person's whereabouts:

- Use the Federal Parent Locator Service (FPLS). The FPLS is a computerized network of information on individuals, including their Social Security numbers, most recent home addresses, wage and benefit information, and employment data. The information comes from federal agencies, including the Internal Revenue Service, the Department of Defense, the National Personnel Records Center, the Social Security Administration, and the Department of Veterans Affairs. It also includes data from state Employment Security agencies and the National Directory of New Hires.



RESOURCES

- Form OCFS-LDSS-7031 (Transmittal for Parent Locator Service Search) is available at <http://ocfs.state.ny.us/main/forms/adoption/>
- See the Administrative Directive (07-OCFS-ADM-09), titled *Access to Federal Parent Locator Service - State Parent Locator Service - Additional Financial Information in Child Welfare Cases for Purposes of Permanency*, available at http://ocfs.state.ny.us/main/policies/external/OCFS_2007/
- Send one or more letters to the parent's last known/possible address.
- Visit the last known addresses and make inquiries of the landlord and/or neighbors.
- Check with relatives and acquaintances of the parent.
- Check with other agencies where the parent is known to have contact.
- Check the local hard-copy telephone book, Internet-based telephone book at www.whitepages.com, and directory assistance.
- Check the WMS computer system through the local department of social services.
- Check jails and prisons:
 - Many county jails have an Internet-based roster of current inmates—type the name of your county and “inmate roster” into a Google or other search engine to determine whether your county has one, or call your county jail.
 - The New York State Department of Corrections (DOCS) has an Internet-based roster of current and former inmates going back a few decades, and includes the date(s) of admission and discharge(s), located at <http://nysdocslookup.doc.state.ny.us>
 - Corrections Connection is an Internet-based site that links to all 50 states' DOCS sites at <http://www.corrections.com/links/show/30>

- To locate someone in the federal prison system, check the U. S. Bureau of Prisons website at http://www.bop.gov/inmate_locator/index.jsp
- Check the NYS Division of Parole’s Internet-based listing of parolees, available at <https://www.parole.state.ny.us/lookup.html>
- Send Form LDSS-2725 (*Request/Response for Name and/or Address of Father of Child Born Out of Wedlock*) to the Putative Father Registry available on the OCFS website at <http://ocfs.state.ny.us/main/forms/adoption/>
- Check obituaries/death notices:
 - Check the local newspaper’s online obituary archive.
 - Check the nationwide Social Security death index at <http://www.deathindexes.com/>
- Check military records to verify military employment through the website(s) of the military branch(es)
 - Army: www.army.mil/
 - Navy: <http://www.navy.mil/swf/index.asp>
- Call the local hospitals and the county Probation Department.
- Process CSEU check and DMV clearance (the DSS-2860 Child Support Enforcement Referral form has a place to check off military service, arrest record, and adjudication.
- Check websites such as:
 - <http://people.yahoo.com>
 - <http://supersearchpage.com>
 - <http://anywho.com/wp.html>
 - <http://phonenumbers.addresses.com/phone.php>
 - www.zabasearch.com
 - www.usa.gov
 - www.censusfinder.com

5. Gathering Evidence

As has been noted previously, the caseworker often will assist the attorney in gathering and organizing the evidence to be presented in the termination proceeding. In many cases it will be necessary for the caseworker to make repeated contacts with the same individuals, not only before the initial presentation of the case to the agency’s attorney to determine whether there is adequate evidence to initiate a proceeding to terminate parental rights, but also to prepare the case. The contacts made by the caseworker may be sources of a large portion of the evidence during the hearing.

The child's foster parents and foster care agency staff may have relevant information about the child and his or her family that will be useful to the agency's case. The primary role of the foster parents and agency staff is that of temporary, nurturing custodians, and they should not be caught in the middle between the child and his or her family. However, if the agency does decide to petition for the termination of parental rights, the foster parents/agency staff may be able to verify information that is documented in the case record, such as the frequency, duration, and quality of parental visits, the parents' behavior, and the child's reaction to visits. They may also be helpful in verifying other information concerning the child's educational, physical, and emotional progress.

6. Witnesses Who May Testify

The caseworker as a witness: The caseworker for the child and the family often is the pivotal witness in the presentation of the agency's case. The caseworker normally will be the witness with the greatest quantity of firsthand knowledge about the child and his or her parents and will be required to provide relevant information on direct examination by the agency's attorney and cross-examination by the parent's attorney.

Familiarity with the facts: It is important for the caseworker to realize that he or she is not expected to have detailed information at his or her fingertips concerning the entire history of the child and the family. The caseworker, however, needs to be familiar with the facts of the case that support the elements of the ground or grounds for termination of parental rights. Caseworkers are allowed to refer to the case record to refresh their memory regarding something they can't recall at the moment. However, after a caseworker's memory is refreshed, he or she must put the case record aside and testify from memory.

Before the caseworker is scheduled to testify, it is important that he or she thoroughly review the facts of the case, from the time of the child's placement until the initiation of the termination proceeding. A chronology of the case—key events, with dates of occurrence, in chronological order—will be a most useful tool in this regard. The caseworker should review the chronology and make marginal notations beside each piece of pertinent information, indicating where that information can be found in the case record. The chronology will not be introduced by the agency attorney into evidence at the trial, but the caseworker may use it to refresh his or her memory (recollection).

If the caseworker has not prepared a case chronology, he or she should at least review the case record and make a list of the salient features of the case. This can include case information from the CONNECTIONS system and any relevant documents associated with the case record, such as permanency hearing reports, documentation from medical professionals, and correspondence from the parents. The caseworker should review the relevant portions of the case record and chronology, as well as key points for the verbal testimony, with the agency attorney.

Maintaining composure in the courtroom: The experience of testifying in the courtroom and being examined by attorneys often makes those not familiar with court procedure extremely uncomfortable. It will help the witness to realize that even the most aggressive respondent's attorney is not making a personal attack on the witness but is

simply doing his or her job—trying to uncover every piece of information that will support his or her client’s position.

Different attorneys use different approaches: some raise their voices; others use verbal tactics to try to unsettle a witness whose testimony is beneficial to the other side. Whatever the tactic, if the witness is well prepared, avoids taking offense regardless of the attorney’s manner, maintains a calm attitude, and answers all questions straightforwardly, simply, and as accurately as possible, his or her testimony will withstand even the most rigorous cross-examination. It may be helpful for the caseworker to pause and think for a moment before answering questions while testifying, rather than feeling rushed to answer, particularly during cross-examination.

While in court, the caseworker must avoid unnecessary emotional displays such as laughing, grimacing in disagreement, or shaking his or her head to contradict someone else’s testimony. Such behavior is unconvincing. Opposing counsel sometimes deliberately bait witnesses, hoping they will lose control, leading at a minimum to diminished credibility and at most to damaging statements. Whatever the witness’s feelings, he or she should not become defensive or sarcastic, or ridicule opposing counsel, and should remain relentlessly polite.

What to take to court: When going to testify in court, the caseworker should make sure to take all documents that he or she may need to refer to or that the attorney may want to introduce into evidence, even if the attorney also has copies of them. These documents will vary from case to case but often will include the following:

- relevant portions of the case record, including print-outs from CONNECTIONS and/or hard-copy documents associated with the case record;
- the case chronology or other reference material prepared by the caseworker;
- any physical evidence which the attorney wishes to use at the hearing (Christmas cards, photographs, gifts, etc.);
- letters to or from the parent;
- other documents in the caseworker’s possession which are important to the case.

Often, especially in complicated cases, the agency attorney will have many exhibits of various kinds to introduce. If there is a good working relationship between the caseworker and the attorney, the caseworker may be very helpful in keeping the evidence organized and ready at hand. The caseworker needs to make sure that the copies of the documents he or she provides to the attorney are identical to those he or she brings to court.

Kinds of testimony expected: The caseworker will testify to those facts about which he or she has firsthand knowledge. This may also include testifying about documentation in the case record that was written by previous caseworkers assigned to the case. While the current caseworker may not have firsthand knowledge of the events documented by the previous caseworker, he or she can testify that the information was documented in the case record, by whom and the date recorded. The testimony of the caseworker will vary according to the amount of contact he or she has had with the child

and the family, and according to the ground for termination. Normally the caseworker will testify to facts concerning the following:

- circumstances surrounding the child's placement with the agency;
- details of the caseworker's assessment of the family and the service plan agreed upon between the agency and the parent;
- details of the services provided by or through the agency to rehabilitate the family;
- efforts made by the parents to visit the child, plan for the child, and reunite the family unit;
- facts establishing or from which it might be inferred whether the parent has put into practice the lessons learned or skills acquired in trainings and services;
- facts establishing or from which it might be inferred whether there has been any change in the parent's attitudes, behavior patterns, or thinking habits.
- facts establishing or from which it might be inferred whether the parent is in any better position to parent his or her child now than he or she was at the time of placement;
- Where applicable, reasons for any decision made by the agency to discourage visitation or dispense with diligent efforts to rehabilitate the family; i.e., the reasons for a determination that these efforts would be detrimental to the best interests of the child.

On cross-examination, the respondent parent's attorney may try to elicit information to support his or her client's case. The caseworker should remain calm, answer only the question asked, and always answer truthfully, even if the answer to the question is not favorable to the agency's case. The parent's attorney may seek to elicit information to support the following argument(s) that:

- the agency undermined or prevented visitation between the parents and the child;
- the child was turned against the parents by the agency or foster parents and was encouraged to act out when the parents visited in the foster home;
- the agency did not make a sufficiently strong diligent effort to reunite the family;
- the parent's inability to visit was due to circumstances beyond his or her control; and/or
- the parent could not plan sufficiently because the agency did not provide enough support to help the parent overcome barriers.

7. How to Testify

The caseworker (and all witnesses) may testify only from memory as to the facts of which he or she has personal knowledge and should therefore prepare to testify by memorizing what he or she saw, heard, said, or did. There is a difference between committing facts to memory and memorizing answers. The latter tend to be artificial or stilted, sound unconvincing, and should be avoided. There also is the risk of the witness responding with a memorized answer that does not respond to the question that was asked.

Caseworkers should be aware of the following guidelines as they prepare to testify:

- Answer questions directly. Testimony is constantly being evaluated by the judge who gives it weight proportional to its credibility. Therefore, it is important that caseworkers respond to questions with direct replies to avoid the appearance or implication of giving half-truths or less than complete answers. A direct response conveys an impression of truthfulness and trustworthiness.
- Do not generalize. Detailed answers reflect clarity of recall and enhance credibility. Give factual answers, not opinions, conclusions, or speculation.
- Do not guess. If a caseworker does not know the answer to a question, he or she should say so and not try to fill in by assumption or guess work. Do not hedge answers with “I believe” or “I think.” There is a difference between saying “I do not know” and “I do not recall.” “I do not know” conveys that you never knew the answer, while “I do not recall” implies you know the answer but cannot remember it at the moment. If the latter, the caseworker will be allowed to refresh his or her memory by reading any written materials concerning the subject.
- Do not volunteer information. The proper answer to a question is a direct answer and no more than that. Do not elaborate unless asked to do so and do not provide information not called for. Caseworkers should not answer questions they think should have been asked or what they think the attorney intended to ask. It is not uncommon, particularly in response to a poorly phrased question, to want to explain the answer but caseworkers must avoid the temptation. If the answer necessarily leaves something unsaid that should be said, it is the responsibility of the agency attorney to bring it out on redirect examination.
- Listen attentively to the form of the question. It is not unusual for an opposing attorney to ask the same question in different forms at various stages of cross examination. A caseworker’s answers should be consistent. Inconsistent answers, regardless of explanation, damage a caseworker’s credibility. Also, be alert to double questions. For example, if asked “Isn’t it true you picked up Jason on September 4 and he said he was excited about going to see his mother,” if both parts are true, say so. If one part is true and the other isn’t, respond by answering each part separately: “He said that but not on September 4.” If you did not hear the question or did not understand the

question, ask the attorney to repeat the question. If you do not understand the question, say so.

- Await the court's ruling when an objection is raised. An attorney may object to the propriety of a question because of numerous procedural or substantive rules. If so, await the judge's ruling before answering. Also, when undergoing cross-examination it is advisable to pause momentarily before replying to allow the agency attorney a chance to object should he or she desire to do so.

8. The Lay Witness

The lay witness may be any person not testifying in his or her professional capacity who has firsthand information relevant to the case.

Choosing the lay witness: There may be several people in the community or elsewhere who have had contact with the parents or the child and can provide the court with relevant information. Such persons should be among those contacted by the caseworker when gathering evidence. Not everyone who is acquainted with the situation should be a witness, however. Only those persons who can provide testimony relevant to the elements of the specific ground(s) for termination should be considered as witnesses. Suppose, for example, the agency is attempting to terminate parental rights on the ground of permanent neglect, and the parent asserts that he or she is not financially able to maintain contact with the child or to plan for the future of the child. A lay witness may be able to testify to the parent's financial resources. Service providers to whom the parent was referred can testify to the participation of the parent in such services. Persons who observed contacts by the parent with the child can testify to what they observed in regard to the affection demonstrated by the parent with the child. The most important point is that lay witnesses should be used economically, or the termination hearing will be extremely lengthy. Although the agency attorney ultimately will decide which witnesses to call, the caseworker is often instrumental in ascertaining before the trial which potential witnesses are likely to provide the most helpful evidence.

Other important witnesses in a termination proceeding may be the foster parents or the residential child care staff, and, in some cases, the child.

The foster parent(s)/residential child care staff: The foster parents'/residential child care staff's testimony regarding the parent's visitation and communication with the child may also be important, as they have had the most extensive firsthand contact with the child.

The child: Section 384-b (3)(k) of Social Services Law provides that the court *may* consider the wishes of a child over age 14. The court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child. Note that consideration of the child's wishes is discretionary with the court. The child's wishes and preferences can be considered only at disposition.

The testimony of the lay witness: When the agency presents a lay witness, it has already been decided, ideally between the worker and the agency attorney, that the

witness will be called to introduce particular, relevant evidence. The agency attorney will question the witness only about those areas. Cross-examination by the respondent's attorney should be limited to questioning the witness on subjects covered in direct examination by the agency's attorney.

Preparing the witness: It is the responsibility of the attorney who will present a witness to prepare that person before the court proceeding. In some agencies, the caseworker may assist the attorney with preparation of witnesses; however, the primary responsibility for preparation of a witness is the responsibility of the attorney. In helping to prepare the witness, it is important to provide enough information about what is likely to happen so that he or she will feel as comfortable as possible, but there should be no suggestions concerning the content of his or her testimony. The attorney should:

- Review with the witnesses the material about which they will be asked to testify. This will refresh their memory and make them feel more comfortable about the kinds of questions they will be asked.
- Explain that the agency attorney is not permitted to ask "leading questions," or questions that by their very language suggest the desired answer. The witness should be aware that the attorney may be required to ask certain questions in a rather vague manner, and that the witness should answer the question as completely and directly as possible in his or her own words. If the witness does not understand the question, it is perfectly permissible to ask the attorney to rephrase the question.
- Emphasize the importance of paying attention and remaining calm.
- Emphasize that all testimony must be truthful and accurate and that the witness takes an oath in court promising to tell the truth.
- Explain that the attorney for the respondent parent will attempt to shake the witness's confidence and bring out contradictions or holes in his or her testimony in order to weaken it. Explain that the witness need not fear cross-examination so long as the testimony is clear, confident, and truthful.

9. The Expert Witness

When an expert is needed: The agency should obtain the services of an expert whenever it wishes to introduce into evidence any fact or opinion about which a lay person is not competent to testify. Normally, this testimony is related to a special area of knowledge and requires the degree of education and training possessed by an expert. While the lay witness may testify to his or her opinions about certain subjects, in other areas the law requires the opinion of an expert. For example, the lay witness may testify to his or her opinion on whether a particular person was intoxicated at a specific time, but expert testimony may be required concerning certain types of drug use. The caseworker should consult with the agency attorney to determine whether an expert will be required to give testimony about a particular fact or occurrence.

Experts who may be useful in a termination proceeding include physicians, psychiatrists, psychologists, social workers, or handwriting experts. Depending on the facts that the agency must prove, other kinds of experts may be useful,

Choosing the expert witness: There are several factors the agency might consider in choosing the expert who will testify for them. It is most important that the expert present a demeanor of convincing professional competence. Some of the factors which the agency might assess include the following:

- The general attitude of the expert: Experts often disagree, especially in areas requiring a large degree of subjectivity. Therefore, it is important that the agency be familiar with the general professional attitudes of various experts in order to choose the person most appropriate for a particular case.
- Competence and reputation: It is most important that the expert be able to convince the court of the accuracy of his or her position. The attorney for the respondent parent will likely try to impeach the agency's expert with contradictory expert testimony or documents, or by pointing out inconsistencies in his or her testimony. Therefore, it is desirable that the agency's expert has a superior reputation for competency and integrity.
- Composure and strength of opinion: Because the parent's attorney will attempt to get the expert to make concessions or attempt to point out inconsistencies in his or her testimony, it is critical that the expert not be shaken by the opposing attorney. Ideally, the agency should use an individual who is very confident in his or her opinion and of the facts upon which it is grounded.

Consulting with and preparing the expert witness: The agency attorney is responsible for being completely familiar with the findings made by the expert and the basis for the expert's opinion. This will help avoid unexpected testimony in the courtroom, which can compromise the agency's case. The attorney should familiarize him or herself with the findings and the opinion of the expert. When the agency attorney is thoroughly apprised of the expert's opinion beforehand, he or she is able to present the most effective case.

The agency attorney responsible for preparing the expert witness for the hearing is likely to need information from the caseworker to do so. To prepare the expert witness, the agency attorney generally takes the following steps depending on the experience of the witness testifying as an expert and the witness' knowledge of the subject matter:

- Review with the expert the material that will be covered in direct examination. The expert will be more comfortable and effective in the courtroom when he or she is sure of the scope of information that will be required. A review of this information also will facilitate the expert's understanding of the direction the testimony will take and will support the ability of the expert to provide an opinion.
- Explain the purpose of cross-examination. Make sure that the expert understands that a proceeding to terminate parental rights is an adversarial proceeding, and that the parent's attorney is committed to citing any and all evidence that is favorable to his or her client or adverse to the petitioning agency. If the expert recognizes the role of the parent's attorney, he or she will

be less likely to react personally to the cross-examination and more likely to respond appropriately to the questions asked.

- Explain the technique of discrediting the expert with texts. It is a popular technique to try to discredit the expert with definitive material on the subject matter of his or her testimony. This procedure involves using written material authored by a recognized expert in the same field that contradicts or undermines the testimony of the expert on the stand. To use this technique, the respondent's attorney must elicit the expert's acknowledgment, on the witness stand, that the author has a well-established reputation in the particular field and is an authority recognized as reliable by the expert who is testifying. It is important to caution the expert witness of the possibility that the respondent's attorney may use this technique.

10. Rules of Evidence

The most confusing aspects of an adversarial hearing can be the interchanges between the attorneys and the judge that result from one of the attorneys objecting to a question asked by the other attorney. There is a complex system of rules about what information can be entered into evidence in a courtroom. These rules control the types of evidence that are admissible in court and often require that certain evidence not be heard by the court. Normally, however, the rules of evidence do not come into dispute until one of the attorneys brings up the issue. This is done when the attorney makes an objection. When the caseworker is testifying and hears an attorney raise an objection, the caseworker should stop talking and wait for the judge to make a ruling on the objection. Although the caseworker has no direct role making objections, it is helpful to be familiar with the rules of evidence that arise most often. Some of these are described below.

Hearsay Evidence

Simply stated, hearsay involves testimony or documents that quote people who are not in court and is offered for the truth of the matter asserted. A typical example of hearsay would be the witness responding when asked "What did Ms. Jones tell you?" or "What did you hear Ms. Jones say"? Hearsay is generally not admissible because the person who supposedly knew the facts—Ms. Jones, in this example—is not in court to state his or her exact words. Further, because Ms. Jones is not in the courtroom, the judge cannot assess her demeanor and credibility, nor can the other party's lawyer cross-examine her.

Exceptions to the Hearsay Rule

As significant as the hearsay rule itself are the exceptions to the rule which allow hearsay testimony. There are many different types of statements that technically are hearsay (out of court statements) but that nevertheless are admissible as evidence because they belong to one or more of the categories of exceptions to the hearsay exclusionary rule. Some of the more common exceptions are admissions, business records, and public documents." Again, this information is presented to help the caseworker be familiar with objections the attorneys may raise in court. However, if the caseworker is asked a question and no one objects to him or her answering it, the caseworker (and other

witnesses) must answer the question even if he or she has concerns about whether it should be entered into evidence.

Admissions: An admission is an act or statement by a party to the court proceedings, or his/her representative, which is inconsistent with such party's position at trial. The admission may be given in evidence against him/her in court. For example, let's say the respondent parent told the parent's neighbor that the parent had no intention of cooperating with the agency in its plan to rehabilitate the family and that the parent refuses to change his/her life style in any way. These statements would constitute admissions against the parent's position on the issue of "failure to plan" in a permanent neglect proceeding. An admission also can be inferred from silence. If a parent is confronted with a statement or asked a question to which he or she would be expected to comment or answer if not true, but says nothing, his or her silence can constitute an admission.

Business records: The entry of any act, transaction, occurrence, or event is admissible into evidence if:

- 1) it was made in the regular course of any business, and
- 2) it was the regular course of such business to make such an entry, and
- 3) the entry was made at the time of the event or within a reasonable time thereafter.

(McKinney's Civil Practice Law and Rules (hereafter, CPLR), Section 4518)



Note: OCFS regulation 18 NYCRR 428.5(a) requires that progress notes be made as contemporaneously as possible with the occurrence of the event or the receipt of the information which is to be recorded. This standard was enacted to assist agency compliance with the business record exception to the hearsay rule.

If these three prerequisites are proven to be true, usually by the testimony of the custodian of the records, then the business records are admissible as evidence at the hearing. Records that may be admissible under the rule include, but are not limited to: case records and hospital, church, and telephone company records.

Opinion Evidence

Whether it involves the opinion of an expert or a lay person, opinion evidence often plays an important role in a termination proceeding. But again, a witness is permitted to testify only to those opinions he or she is competent to form. The general rule is that a witness may testify only to facts, and not to opinions or conclusions drawn from those facts. There are exceptions, however, which permit testimony of opinions of lay witnesses or experts.

Opinion evidence of the lay witness: The law assumes that the ordinary or lay witness is competent to testify to his or her opinion concerning those areas with which he or she has had general experience. Thus, opinions of non-expert witnesses have been received in evidence concerning the following:

- Matters of color, weight, size, quantity, light and darkness, and inferences as to race, language, persons, visibility, sounds, and the like.
- Matters involving taste, smell, and touch. For example, a witness may testify that a certain beverage that the person drank was whiskey.
- The state of emotion exhibited by a person; e.g., whether the person appeared to be angry or joking.
- The apparent physical condition of a person, which is open to ordinary observation. For example, a lay witness may testify as to a person's general strength, vigor, feebleness, illness, and comparative condition from day to day.
- Identification and likeness. The witness may be asked whether he or she knows a certain person, and if so, whether an indicated individual is that person.
- The identification of a person by voice.
- Whether a person appeared to be intoxicated.
- The estimated age of another person based on appearance, as described by the witness.
- The genuineness of the handwriting of another. Before expressing such an opinion, the witness must show in what way he or she acquired familiarity with the handwriting in question.

11. Documentary Evidence: The Best-Evidence Rule

Whenever the agency seeks to prove the content of any writing that may be included in the evidence in a termination proceeding, care should be taken to have the original document available because of the "best-evidence rule." The caseworker can be of great assistance to the agency attorney in collecting all the original documents that may be relevant to issues in the proceeding. If the agency has made a copy of an original document, and identifies it as such, it is admissible into evidence as the original, whether the original exists or not.

The best-evidence rule requires that "whenever a party seeks to prove the contents of a writing, he must produce the original writing or satisfactorily account for its absence." The rule applies only to writing and covers writing ranging from official records and private letters to a note on a slip of paper. The rule applies in three situations:

- when the witness's sole knowledge of a fact is gleaned from a document; i.e., when the witness knows a fact only because he or she read it somewhere (this may often be the situation when key information was recorded in the case

record by previous caseworkers who no longer work for the agency and are unavailable to testify);

- when the writing is a legally operative instrument; i.e., a divorce decree, a contract, or a surrender instrument;
- when the witness expressly refers to a written document and attempts to summarize its contents.

(Practicing Law Institute Compendium of New York Law)

12. Leading Questions

When an attorney asks his or her own witness a question that suggests the desired answer, the question is a leading question and it may be objected to by the attorney for the other side. The rationale for this rule is that it is the witness and not the attorney who is testifying. Although there are exceptions, a leading question generally can be identified because it can be answered adequately by a simple “yes” or “no.” If there is an objection to a leading question, the attorney will have to rephrase the question so the witness can answer it in his or her own words.

An example of a leading question is: “You discussed a surrender of this child with the mother on May 15, didn’t you?” This question suggests the answer within the question and would likely be considered a leading question. The same question in a non-leading form would be: “What did you discuss with the mother during your meeting on May 15?”

There are, however, basically three situations in which leading questions are permitted:

- The attorney may lead his or her own witness through introductory matter which is not at issue in the hearing. For example, the witness’s attention may be drawn to the time or place of an event to which he or she will be testifying, but the witness may not be “led” through any details of the event.
- An attorney who is conducting a cross-examination may ask leading questions of a witness called to the stand by the other party.
- In direct examination an attorney may ask leading questions of a hostile or unwilling witness, as the examination may assume the character of cross-examination.

C. ACTIONS REQUIRED OF THE SOCIAL SERVICES DISTRICT UPON TERMINATION

Once the parental rights of all of the parents whose consent to the adoption of the child is required have been surrendered or involuntarily terminated, the child is legally free for adoption. Ideally, the agency has already identified the prospective adoptive parent(s) for the child and these prospective parent(s) have already filed a petition to adopt while the termination proceeding was ongoing. The reason for this, as has been discussed throughout this guide, is to expedite permanency for the child by taking actions concurrently rather than sequentially, as appropriate.

Upon terminating parental rights, the court is responsible for inquiring whether any foster parent(s) with whom the child lives, or any relative of the child, or other person, seeks to adopt the child. If any of these people seek to adopt the child, the court is required to accept petition(s) for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency. The court is responsible for establishing a schedule for concluding other inquiries and investigations necessary to complete a review of the adoption of the child and for finalization of the adoption.

When the court transfers guardianship and custody of the child to the agency, the attorney for the agency that filed the petition must promptly serve notice of the order to the persons who have been approved by the agency as the child's adoptive parents. The attorney must advise the prospective parents that an adoption proceeding may begin and the agency must advise the prospective adoptive parents of the procedures necessary for the adoption of the child and provide them with the necessary documents. The practice in many courts is that the agency advises the prospective adoptive parents of both the fact that an adoption proceeding may begin and the procedures necessary for adoption. Prospective adoptive parents may submit a petition to adopt a child to the court in which the termination of parental rights proceeding is being heard, even before that proceeding is concluded. [SSL §384-b(10)(11)]

D. APPEALS

Either the agency or the respondent may appeal an unfavorable decision of the Family Court (or Surrogate's Court) in a termination proceeding. Section 1112 of the Family Court Act provides for an absolute right to appeal an order of disposition, i.e., any order made to finally dispose of the case, such as an order terminating (or refusing to terminate) parental rights. (An intermediate order that does not dispose of the case may be appealed only with the permission of the Appellate Division that would hear the appeal.)

A decision about whether to appeal must be made as quickly as possible since state law limits the time in which a notice of appeal can be filed. An appeal must be initiated no later than 30 days after the entry and service of the order to which the appeal is related or 35 days if served by mail. An appeal does not allow new testimony or witnesses to be presented to the Appellate Division; rather, an appeal allows the review of transcripts and the submission of written legal briefs and oral arguments by the opposing attorneys.

Agency attorneys actually file the notice of appeal and have responsibility for the appeal; however, caseworkers may be involved in deciding whether or not to appeal a particular disposition. Caseworkers should monitor the progress of the appeal and periodically check in with the attorney.

During the course of an appeal from a Family Court order, the disposition made by the court is generally continued, and the child usually will continue to be placed as the court has ordered, unless a stay of the court order is granted either by the trial or appellate court.

Chapter Seven

Services to Birth Parents

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When the agency has made the decision to seek a surrender of the child from the parent(s), or to file a petition to terminate parental rights, the caseworker must continue to work with the birth parent(s) at least until these processes are completed. This process is often less traumatic for all parties when the parent surrenders his or her rights as opposed to a termination proceeding. The surrender process also often results in more timely permanency for the child and is helpful in maintaining relationships that promote the healthy development of the child. During the process of severing the legal parent-child relationship, it is necessary both to respect and safeguard the legal rights of birth parents and to assist the parents in coping with the decision, voluntary or otherwise, to give up their child(ren). It is important to remember that the court may not grant the termination of parental rights that the agency is seeking and may require continued services and efforts by the agency to reunify the family.

Ideally, the caseworker has been having open discussions with the birth parents from the earliest days of the case through to the present time, with open, frank, respectful discussions about the permanency plan for the child. When concurrent planning has been occurring with the family, the alternative permanency plan should be known to everyone involved with the case through discussions that involve full disclosure by the caseworker.

Discussions about adoption with birth parents, and all parties in the case, must take place in a culturally competent manner with caseworkers understanding and respecting the family's cultural norms in order to engage them in decision-making related to adoption. This approach is not only good practice that benefits the birth parents, but it also helps the worker identify and be able to communicate to the adoptive family the personal habits and behaviors of the birth family and child in order to promote continuity of care for the child, once adopted. The caseworker must determine if the birth family understands and is able to communicate both verbally and in writing with the caseworker. An interpreter should be brought in by the agency to help with the case, if necessary. If the parent has limited cognitive abilities, or severe mental health issues, the caseworker must make his or her best attempts to discuss adoption with the parent in terms the parent can understand; most likely multiple conversations will be required. Again, the family's needs in this regard should be well-known by this point in the case.



Note: Although this chapter concerns services to birth parents, caseworkers may be assigned to work with adoptive parents who are considering surrendering their adopted child, or cases in which the agency is considering terminating the adoptive parents' parental rights. The work described below applies to such cases as well.

A. PRIOR TO SURRENDER OR TERMINATION

1. Talking with Parents About a Surrender

As discussed in Chapter 4, talking with a parent about surrendering a child is likely a series of conversations and not limited to a one-time event. The OCFS *Journey Through Adoption: Best Practices in Achieving Permanency* training curriculum provides the following tips for discussing surrenders with birth parents when progress on reunification is slow or nonexistent and, in the caseworker's judgment, there is some chance that the parents will consider surrender:

- Focus on the positive aspects of surrender (e.g., on what it can mean for the child relative to well-being and healthy development).
- Assess the parents' thinking and feeling about and relationship with the resource family. Use this information to begin assessing how comfortable the parents are about giving parental responsibility to this resource family.
- Explore how the parents' underlying conditions, including self-concept, values, beliefs, and cultural orientation, impact or influence their decision to surrender.
- Help the parents ascribe meaning to the act of relinquishing their parental rights. If parents experience the surrender as their personal failure, encourage them to view it as a positive way of helping the child.
- Communicate the seriousness of the decision. Be certain they understand they cannot be punished by the court for declining to surrender.
- Convey information about the normalcy of parents' grief; facilitate and support their grieving.
- Encourage the parents to identify what is important for their child(ren) to remember about them or their heritage. If this interests them, they can convey what is important through a card, a letter, a Lifebook, or direct conversation with a child, explaining the parents' reasons for deciding to allow another resource family/person to become their permanent parent(s).
- Assess the parents' trust of you and offer a referral to supportive counseling. Make sure any referral is viewed by the parent as beneficial.
- Explore with the parents what other emotional supports or resources would be available to them after surrender.
- Show the parent(s) the surrender form and explain what will likely happen in court if the surrender is a judicial surrender.

- If this is an appropriate option for the case, discuss the option of a conditional surrender with the parents. (*See Chapter 4 for more information about conditional surrenders.*)

It is important to understand that talking about surrendering stimulates feelings and thoughts for the parents associated with loss; the caseworker should be familiar with the stages of grieving and the parents' need to work through them. Throughout the process the caseworker will need to be patient and diligent in providing support to the birth parents. Many agencies employ parent advocates to assist in supporting parents during this difficult time. Parent advocates are generally para-professionals who have had personal experience with the child welfare system and, through training and supervision, are able to use their experiences to support parents going through a similar experience.

It is also possible that discussions about surrender and the prospect of the child's adoption will mobilize the birth parents and stimulate their wish to reclaim the child.¹ In this situation, the caseworker, in consultation with the supervisor and the agency attorney, will need to decide whether to give the parents' continued opportunities to correct the circumstances that have prevented the child from being returned safely to their home, or whether to file a petition to terminate parental rights. Consideration should be given to the length of time the child has been in foster care, the parents' strengths and needs, the parents' motivation and ability to make the required changes timely, and all other relevant case circumstances.

2. Parents' Religious Preference for the Child Upon Surrender

Just as agencies must advise parents of their right to express their religious preference for the foster home in which their child is placed when first coming into care, the agency must give the surrendering birth parent(s) the opportunity to express their religious preference. The birth parents may prefer that the child be placed in a family of the same religion as the parent, of a different religion from the parent, without regard to religion, or with religion as a subordinate (less important) consideration.

If a parent chooses to express his or her wish about religion, such preference must be made in writing on Form LDSS-3416. This form can be found on the OCFS website at <http://ocfs.state.ny.us/main/forms/cwcs/default1.asp>. The agency is required "consistent with the best interests of the child and where practicable to give effect to the religious wishes of the birth parent." OCFS regulation requires that an agency "make an effort" to place each child in a home as similar to and compatible with his or her religious background as possible with particular recognition that the Social Services Law requires a court, "when practicable," to give custody through adoption only to persons of the same religious faith as that of the child. [SSL §373; 18 NYCRR 421.6(h) and (i); 18 NYCRR 421.18(c)].

¹ S. Edelstein, D. Burge, & J. Waterman. "Older Children in Preadoptive Homes: Issues Before Termination of Parental Rights. In G. Mallon & B. Leashore, eds, *Contemporary Issues in Permanency Planning*. CWLA Press, Washington, DC. (2002), pp. 1–22.

The form also allows the parent surrendering to specify that, despite efforts to locate a home of a certain religion, if no home has been found for the child within a certain number of months, the placement of the child may be made without regard to religion.

In the case of unmarried parents, the birth father whose consent would be required is allowed to express his preference for the child's religious upbringing. In working with the birth parents, care should be taken to avoid having two conflicting religious preference statements signed. Both parents should be advised that they have the right to establish a religious preference, but that conflicting statements are not in the best interests of the child, and that the agency will make the final decision. If the mother and father of the child separately surrender and sign conflicting religious preference statements, the placing agency must choose between these statements on the basis of practicability and the best interests of the child.

3. Parents' Financial Support of a Child in Foster Care

Parents are held responsible for financially supporting their children while in foster care. Agency officials are required to advise parents accordingly at the time of placement and evaluate the parents' ability to contribute toward the cost of the child's care (18 NYCRR 422.5(a)). While much of this work is done early in the case, it is relevant to adoption work because there are circumstances related to adoption under which the parent is not required to financially support. Social services officials are prohibited from making a referral to the child support unit of a parent applying for foster care in the following circumstances:

- if the official determines that the referral will adversely affect the health, safety or welfare of the foster child or other persons in the child household; will adversely affect the length of the child's placement or impair the ability of the child to return home when discharged from foster care;
- when a mother or father surrenders a child born out of wedlock to a social services official; and
- when a non-adopting spouse with a written separation agreement is living separate and apart from the adopting spouse or has been living apart from the adopting spouse for at least three years before the adopting spouse begins an adoption proceeding. [SSL §398(6)(d), (e) and (f); 18 NYCRR 422.2].

Also, the law exempts mothers of out-of-wedlock children from the obligation to support a child they surrender to a voluntary authorized adoption agency. Parents of children born in wedlock are not relieved of this obligation, and child support is to continue until finalization. [SSL §398(5)(a) and (6)(f)]

B. RIGHTS OF BIRTH FATHERS ²

Caseworkers have a fundamental obligation to try to identify, locate, and offer services to both parents of children in foster care. Traditionally, child welfare services have tended to focus on children and their mothers, but current legal and practice standards emphasize the importance of involving both the child's mother *and* father and their extended families. Locating and working to engage absent parents and their extended families—with child safety always a paramount condition—is an integral part of child-centered, family-focused casework practice. Regardless of whether the relatives can provide a placement resource, developing or maintaining a relationship with both parents and their extended families often leads to a network of support and connection for the child. However, depending on the case circumstances and the legal status of the father, there are different requirements for working with fathers, as described in this section.

Diligent efforts should be made early in the case to identify the father and his extended family before placing a child or, in an emergency placement situation, immediately after placement, to determine whether they are appropriate resources to care for the child. If the father is not known at the time of placement, a methodical plan for identifying the father should be quickly developed and implemented. This includes using the Federal Parent Locator Service and the State Parent Locator Service, as well as the previously referenced types of processes used for diligent searches. The caseworker should be prepared to assist the potential father, once located, in establishing paternity, if necessary.



RESOURCES

For more information about locating and engaging fathers and their extended families, see:

- *Locating Absent Fathers and Extended Family Guidance Paper* (05-OCFS-INF-05), issued as an Informational Letter in 2005 and available at http://ocfs.state.ny.us/main/policies/external/OCFS_2005/
- Administrative Directive 07-OCFS-ADM-09, titled *Access to Federal Parent Locator Service - State Parent Locator Service - Additional Financial Information in Child Welfare Cases for Purposes of Permanency*, available at http://ocfs.state.ny.us/main/policies/external/OCFS_2007/

1. Fathers of Children Born in Wedlock

If a child has been born in wedlock, and the mother is going to surrender the child or the agency is going to file a petition to terminate her parental rights, the man who is or was married (at the time of conception or birth) to the mother must also either surrender his parental rights or the agency must take action to terminate them.

² Significant portions of this section are based on material from the Center for Development of Human Services. *Journey Through Adoption Curriculum* (2007–2008), pp.259–269.

2. Fathers of Children Born Out of Wedlock

Considerable judicial and legislative attention has been focused on the rights and interests of out-of-wedlock fathers in proceedings affecting the custody or guardianship of their children. Section 384-c of the Social Services Law specifies the categories of fathers of children born out of wedlock who are entitled to receive notice of certain custody and guardianship proceedings affecting the child.

When a mother wishes to surrender her child, or the agency is contemplating a termination of parental rights petition, there must be a specific discussion between the caseworker, the supervisor, and the agency attorney to agree upon a course of action regarding the father. This discussion must take place before any action is taken regarding the mother so that a plan is developed to resolve the parental rights of both parents at approximately the same time.

If the child was born out of wedlock, the agency must determine what rights the unwed father has regarding the child in order to determine what action is necessary to free the child legally. The first question that the agency must resolve if an unwed mother is going to surrender her rights or the agency is considering filing to terminate her rights is: Does the father have legal rights that also need to be relinquished by surrender or terminated? This question is answered by first determining which category the father's situation puts him in: consent father, notice father, or a situation where he has no legal rights in regard to the child. Each category is described below.

Fathers with Full Legal Rights or "Consent Fathers"

For the purpose of adoption, the criteria of who is a consent father of a child born out-of-wedlock is established by §111 of the Domestic Relations Law and by case law, specifically the decision by the New York State Court of Appeals in Matter of Raquel Marie X., 76 N.Y.2d 387, 559 N.Y.S. 2d 855 (1990).

Child Placed More Than Six Months After Birth

If the child was placed for adoption more *than six months after birth*, then the father is a consent father if he has:

- paid a reasonable and fair sum, in accordance with his means, for child support; *and*
- visited the child at least monthly or maintained contact with the custodian of the child when not prevented from doing so.

or

- openly lived with the child for six months during the year before the child was placed, and held himself out to be the father. (DRL §111(1)(d))

Child Placed Less Than Six Months After Birth

If the child was placed for adoption less than six months after birth, the criteria for when the father is a consent father is based on the decision of the New York State Court of Appeals in Matter of Raquel Marie X. referenced above, which held that the standard set forth in DRL §111(1)(e) was unconstitutional. To date, no action has been taken by

the legislature to amend DRL §111(1)(e) to conform with the court's decision. Accordingly, until that occurs, the standard established in the court's decision applies:

- The unwed father has manifested a willingness to accept parental responsibility, by assuming full custody of the child and not merely seeking to block the adoption.
- Such manifestation of parental responsibility must be prompt, and due consideration must be given to the father's manifestation of responsibility for the child during the six continuing months immediately preceding the child's placement for adoption.

If the man in question does not fit in any of the categories above, the agency must consider the next possible category: *Is he a father entitled to notice of certain legal actions?*



RESOURCES

- For more information on the rights of unwed fathers, see:
- *State Court of Appeals Decision on Unwed Father's Rights in Adoption*, issued as an Information Letter in 1990 (90 INF-48), available under at <http://ocfs.state.ny.us/main/policies/external/1990>

3. Fathers with Due Process Rights or "Notice Fathers" ³

If a father falls into any of the following categories, he is entitled to formal legal notice of any procedures regarding the termination or surrender of the mother's rights or any procedures involving the voluntary placement of the child in care. The legal notice requirement is specifically outlined in the law and must be demonstrated to enable the court to actually free the child.

The notice father is offered the opportunity to provide the court with evidence regarding the child's best interests. It is good practice to attempt contact and offer services to any man on this list in any foster care situation, similar to the services that would be offered to the mother of the child. The list includes the following categories:

- any man adjudicated by a NYS court as the father of the child (the "legal father");
- any man who was adjudicated as the father in another state *and* registered that adjudication with NYS;
- any man who has filed an unrevoked notice to claim paternity of the child with the Putative Father Registry;
- any man who is listed on the child's birth certificate as the father;
- any man who lived with the child and mother and held himself out to be the child's father at the time that the child went into care or when the legal proceeding is brought;
- any man identified as the father in a written and sworn statement by the mother;

³ Ibid

- any man who married the mother before the child was six months old and before any surrender or termination of mother's rights.

The sole purpose of giving notice to a non-marital father who fits into one of these listed categories is to enable him to come to court to present evidence as to what he thinks would be in the child's best interests. If a non-marital father's only paternal claim is that he fits into one of these categories but does not satisfy the criteria for a consent father, he will not have a veto power over the child's adoption placement.

Specifically excluded from the right to notice is a man who has been convicted of rape in the first degree involving force when the child who is the subject of the proceeding was conceived as a result of such rape. [SSL §384-c (1)]

Waiver of Notice

Non-marital fathers who are entitled to receive notice of proceedings concerning foster care placement approval, approval of the mother's surrender for adoption, or termination of the mother's parental rights, may waive their rights to receive such notice by a written instrument signed and acknowledged or executed in the presence of one or more witnesses before a notary public or officer authorized to take proof of deeds. [SSL §384-c(5)]

Type of Notice

In addition to notifying the non-marital father of the time, date, place, and purpose of the proceeding, the notice must also advise him that his failure to appear at the proceeding will constitute a denial of his interest in the child and that this may result, without further notice to him, in the transfer or commitment of the child's care, custody, or guardianship, or in the child's adoption in this or any subsequent proceeding at which care, custody, guardianship, or adoption is at issue. [SSL §384-c (6)]

If the non-marital father was properly served with notice of a pending approval of a foster care proceeding, a validation of surrender proceeding, or a termination of maternal rights proceeding, but failed to appear in court at the hearing, his actions will be deemed to indicate his disinterest in the child. The same holds true if the father waived his right to receive notice of any of the above referenced proceedings.

There are protections in the law that prohibit a court order from being vacated, annulled, or reversed in certain circumstances. These instances are:

- when the court order resulted from a proceeding involving the child's custody, guardianship, or adoption and the person applying to the court to have the order vacated was properly served with notice but failed to appear in court or waived his or her rights to notice;
- when the court order resulted from a proceeding involving the child's custody, guardianship, or adoption and the person applying to the court was properly served with notice in any proceeding in which the court determined that the transfer or commitment of the child's care, custody, or guardianship to an authorized agency was in the child's best interests. [SSL §384-c(7)]

In addition, the non-marital father who has received notice of a proceeding to approve the extra-judicial surrender of a child in foster care and has been given an

opportunity to be heard may not challenge the validity of an approved surrender in any other proceeding. [SSL §383-c (4)(d)]

Method of Serving Notice

Notice of the proceeding must be given at least 20 days before the proceeding by a delivery of a copy of the petition and notice to the non-marital father.

If personal service at the non-marital father's last know address can not be done with reasonable efforts, upon conditions set forth in SSL §384-b(4), notice may be given, without prior court order, at least 20 days before the proceeding by registered or certified mail sent to the non-marital father's last known address or the address in the Putative Father Registry.

The law specifically provides that a SSL §384-c non-marital father is not required to be given notice of publication. [SSL §384-c (4)]

4. Putative Father Registry

The Putative Father Registry (PFR) is a confidential registry (record) of fathers of children born out-of-wedlock that is administered by the Office of Children and Family Services, as required by SSL §372-c. Information from the PFR is provided only to certain people or agencies and under specific circumstances, as described below. The registry contains the names and addresses of:

- any person 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, before or after the birth of a child born out-of-wedlock, a notice of intent to claim paternity of the child;
- any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person; and
- any person who has filed with the registry an instrument acknowledging paternity. [SSL §372-c(1)(a)-(d)]

The names and addresses of persons in the registry are furnished to any court or authorized agency, upon request, with the understanding that the information may not be divulged to any other person except upon order of a court for good cause shown. Therefore, caseworkers should contact the Putative Father Registry to obtain the names of any persons who might be required to give consent or are entitled to receive notice regarding foster care, TPR, or adoption proceedings. It may be advisable for the caseworker to check with the registry even if one person is known to be the adjudicated father, since it is remotely possible that a different person has filed an intent to claim paternity with the registry.

A person believing he is the father of a child born out of wedlock may claim paternity by registering with the Putative Father Registry using one of the following forms:

- LDSS-2724, *Notice of Intent to Claim Paternity of a Child Born Out of*

Wedlock: to file a notice to claim paternity either before or after the birth of the child;

- OCFS-3780, *Instrument to Acknowledge Paternity* of an out-of-wedlock child: to acknowledge paternity of a child at any time after the child's birth;
- LDSS-4418, *Acknowledgement of Paternity*: after the child is born. (**Note:** This form can be completed by the mother and/or the father).

To access these forms, go to <http://www.ocfs.state.ny.us/main/forms/adoption/>.

Caseworkers of authorized agencies requesting information from the registry need to complete DSS Form 2725 and send it to the address below:

NYS OCFS Putative Father Registry
Capital View Office Park
52 Washington St., Rm 323 North
Rensselaer, NY 12144-2796
800-345-5437

OCFS has developed a brochure that explains the Putative Father Registry in plain language titled *What Unwed Fathers Need to Know . . . New York State Putative Father Registry*. It is a helpful reference that caseworkers can distribute to families for whom this information is relevant: http://www.ocfs.state.ny.us/main/publications/pub_5040-en_0608_putative_father_registry-text.doc

C. AFTER SURRENDER OR TERMINATION

It is important that casework services be provided to the parent(s) to assist them with the issues resulting from surrendering the child or termination of their parental rights. Caseworkers should help parents' maintain their self-respect and help them plan to move forward with their lives, incorporating the plan of adoption as a means of providing a permanent and safe environment for the child.

To the extent possible and appropriate, birth parents should be helped to consider the connections that adoption can establish among themselves, the child, and the adoptive family, thereby helping the child move into the adoptive placement and minimizing feelings of abandonment, desertion, and guilt. If the surrender of the child was a conditional surrender that included continued contact between the parent and the child, the caseworker can help the parent make plans for maintaining the contact. (*See Chapter 4 for more information on Conditional Surrenders.*)

The caseworker should convey the importance of having the birth parents provide detailed information on the child's developmental, medical, social, and family history. The questions caseworkers complete in the CONNECTIONS health module about birth parents capture much of the necessary information (e.g., pre-natal care, medications, illnesses, drugs, alcohol, tobacco during pregnancy). The *Biological Family Health Information* window provides for recording additional health information about the family that is pertinent to the child. Particularly in the case of an older child, the birth parent(s) should be encouraged to provide photographs, letters, awards, and such

materials as he or she is willing to part with that would allow the child to make some connection with his or her past.

Where appropriate, caseworkers should offer birth parents referrals for professional counseling to help them through this transition. A referral for family counseling may be appropriate if there are siblings remaining at home. Referrals should also be made to the appropriate program areas within the agency, as well as referrals to community agencies that can meet the parents' needs. These may include referrals for Temporary Assistance, if that referral wasn't made earlier in the case or if the parent(s)' circumstances have changed so that such a referral is now appropriate, and referrals for medical and employment services that would meet the physical, mental, emotional, and other individual needs of birth parents.

The caseworker should discuss the agency's procedure on confidentiality of records with the parents. Included in this discussion should be information on the Adoption Information Registry administered by the NYS Department of Health (*see Chapter 4*). At the age of 18, persons who were born and adopted in New York State can register and obtain information on their birth parents. If the birth parent surrendered the child after November 3, 2008, he or she would have received a copy of the Adoption Information Registry Birth Parent Registration Form with the surrender instrument but may or may not have already completed it. A 2007 amendment to the Public Health Law allows parents whose rights have been involuntarily terminated to register with the Adoption Information Registry; before that change, only parents who surrendered could register.

Two kinds of information are provided:

- Non-identifying information—does not require the registration or consent of the birth or adoptive parents.
- Identifying information—requires the registration of the birth parents.

The Adoption Information Registry also has procedures for the anonymous update of medical information provided by birth parents to the adoptive parents of minor children and/or to adult adoptees. Also, birth siblings of the adoptee are allowed to register, and the Registry has procedures that allow for the release of information about those siblings.



RESOURCES

For more information about the Adoption Information Registry, see:

- *Adoption Information Registry—DOH*. This paper was issued as an Information Letter in 2008 and is available under 2008 Policy Directives (08-OCFS-INF-11) at http://ocfs.state.ny.us/main/policies/external/OCFS_2008/

Chapter Eight

Services to the Child

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A. CHILDREN WHO ARE NOT LEGALLY FREE

Regulations require that an action to legally free the child be initiated within 30 days of establishing of the permanency planning goal of adoption. Within one year of setting the goal of adoption for the child, the child must be legally freed for adoption. The progress notes must indicate when the action was initiated, and the case record must include a copy of the petition to terminate parental rights and supporting documentation. In addition, the date that the child was freed must be noted in the progress notes and in CCRS.

If the child is not freed within 12 months, the local department of social services (LDSS) will be considered out-of-compliance with the standard unless: (1) at the time of the first required family assessment and service plan or the risk assessment and service plan required after the 12 months, a petition to terminate parental rights was filed within 120 days of the date the permanency planning goal of adoption was chosen, and the delay was caused solely by the court and not by the district or agency caring for the child; or (2) the court refuses to terminate parental rights. [18 NYCRR 430.12 (e)(1)(i)(ii)]

1. Casework Services

Children who are waiting to be legally freed should still become involved in the process of preparing for adoption. In the majority of cases they will be in need of counseling to help them understand and accept the separations and losses they have already experienced, including, but not limited to, their birth parents, relatives, any previous foster parents and their families, and the impending separation from their current foster parents, if that is necessary.

Helping children work through their emotions and feelings about the separations they have experienced is important for a number of reasons, including enabling them to bond with their new adoptive family. Counseling and Lifebooks will also help the children understand the steps being taken to legally free them and prepare them for moving to adoptive homes in a developmentally and age-appropriate manner. A Lifebook is a combination story, diary, and scrapbook. It can be a tool to help children understand their past experiences so they can feel better about themselves and be better prepared for

the future. It can include information about the child's birth, birth family (including pictures), placement(s), medical history and needs, schools attended, religious affiliations, and other relevant information about the child and his or her background. The process of developing a Lifebook can help a child understand events in his or her life, provide tangible links to the past, and provide a vehicle for the child to share his or her life history with others, including prospective adoptive parents.

While caseworkers can be very helpful and supportive to children, an assessment should be made as to whether the child needs a licensed mental health provider to provide additional counseling. Group and peer counseling may be beneficial for many children, particularly adolescents.

2. Medical Services

A comprehensive medical examination before is required for all children with the goal of adoption prior to adoptive placement, unless the child has had such an examination within six months before the adoptive placement (18 NYCRR 501.1 and 507.2(d)). The state of the child's health and any factors inhibiting normal development and their implications must be noted. Necessary treatment programs for any conditions should be outlined and medical certification of handicaps obtained. Psychological or psychiatric observation or testing must be considered, and when deemed advisable, must be carried out and included in the child's comprehensive health history. The information gathered during this exam, as well as information from previous medical exams and services, can be used when determining whether the child qualifies for adoption subsidy as a handicapped child (*See Chapter 12*).

Any family considering adoption must receive all the medical information about the child and the child's birth parents that the agency has available in accordance with SSL §373-a, and 18 NYCRR 357.3(b)(3), and 18 NYCRR 421.18(m). Often it is helpful to arrange for communication among the family, their physician, and the child's physician. The caseworker should also help the adoptive parents understand the psychological and medical reports and the implications for the child's health. Caseworkers may find the output reports from the CONNECTIONS Health Services module to be helpful.

The inability to arrive at a complete diagnosis and prognosis should not delay efforts to place a child for adoption. There may be conditions under which diagnosis and prognosis are not feasible within a limited period of time. Many adoptive parents are able to accept and work with the fact that a child's disabilities cannot be firmly defined. The earliest possible placement with a family is far more helpful to the child than delaying adoption for further medical diagnoses and/or procedures. [18NYCRR 421.8(e), 441.22 and 507.2(d) 421.18(m)]

3. Legal Risk Placements

A legal risk placement, also known as an "at-risk" placement, is one where a child who is not yet legally free for adoption is physically placed in a prospective adoptive home with approved adoptive parent(s). An adoption placement agreement (APA) is not

signed at this point because the child is not yet legally free for adoption. Even though it may be some time before he or she can be legally freed, the child is placed with a foster family that will make a commitment to provide foster care for as long as needed and to adopt the child if and when the child is legally freed. This type of placement helps minimize the time the child, who needs adoption, spends in foster care and the number of different families with which the child is placed. When it is determined that the non-freed child is unlikely to return home and the agency's plan for the child is adoption, a legal risk placement will help to avoid delays and disruptions and to establish a sense of permanency at an earlier stage in placement.

The determination of the degree of risk and of the feasibility of an "at-risk" placement must be made in consultation with the agency attorney. Legal consultation must be a part of the decision-making process from the start of considering such a placement until the return home, discharge, or adoption of the child.

Children Appropriate for Legal Risk Placements

There are several groups of children at risk of not being legally freed and within each group there are indicators of a child's likelihood of returning home and/or of not being freed for adoption. These situations are indicators, not determinants, of conditions that children are likely to be eventually freed for adoption. No one indicator alone will be sufficient to determine the likelihood of freeing a child and/or of achieving a successful outcome through an "at-risk" placement. These indicators must be considered along with other factors in the casework assessment as to the viability of a particular "at-risk" placement. Each child, family, and case situation must be considered on its own merits.

The first group involves children who are very likely to become freed for adoption, such as in the following cases:

- A child has been surrendered by one parent and the other parent is either unknown or uninvolved with the child; and/or the agency's previous attempts to identify or locate the parent have been unsuccessful.
- A child has come into care as the result of the death of the parent with whom he or she was living and the other parent is unknown or uninvolved with the child; and/or attempts have been unsuccessful to identify or locate the other parent.
- A child has been abandoned or apparently abandoned by one or both parents and initial attempts to locate one or both parents have been unsuccessful.
- One parent's rights have been terminated and the second parent's rights are likely to be terminated due to non-involvement with the child, but those rights have not yet been terminated solely because that other parent is unknown or has not been located.

The second group involves children for whom there is a slightly higher or moderate risk that they may not be legally freed. The major factor that makes these situations more at risk than the first group is the level of parental involvement that has been or is still being shown toward the children, even though the parents' actions, in one

way or another, indicate that the children are unlikely to return home and/or that the parents' rights are likely to be terminated. The presence of some parental involvement means there may be more difficulty in freeing these children for adoption. Situations in this group include:

- The parent(s) have discussed and affirmatively considered adoption and surrender since the child's birth and have transferred the child's care to a local district or authorized agency, but they have not actually surrendered the child.
- The parent(s) have previously surrendered a sibling and have expressed a plan to surrender this child.
- The parent(s)' rights to older siblings have been terminated.
- The parent(s) have a previous history of not participating in planning for this child or an older sibling who has been in care.
- A child has a previous history of abuse, has been returned home, been abused again, and has been returned to care. It is likely that termination proceedings will be initiated.
- The parent(s) have a history of drug or alcohol abuse and have shown no evidence of overcoming or attempting to overcome their addiction.

In each of these situations, there is increased risk and increased complexity due to the presence of at least some, if only minimal, parental involvement in the life of the child. Therefore, greater effort in casework assessment will be required to determine the feasibility of an "at-risk" placement. The caseworker must give the foster parents information that will help provide a sense of the degree of risk or of a possible delay in freeing the child for adoption.

The third group is in what may be termed "high-risk," situations where it is also likely that the children will eventually be freed for adoption and "at-risk" placements may be considered appropriate for them. These situations often involve the termination of parental rights, although a conditional surrender by one or both parents is also possible.

- One such high-risk situation is a child who has been surrendered by one parent and the other parent is incarcerated or institutionalized.

Incarceration or institutionalization of a parent is not in itself a basis for termination of parental rights or for making an "at-risk" placement for the child. It may be, however, that the incarcerated or institutionalized parent has failed to meet parental obligations, as defined in the termination statutes: permanent neglect, abandonment, or severe or repeated abuse. When this is the case, the likelihood that a petition to terminate parental rights will prove successful is sufficiently high that, even though there may be some delay in completing the process, an "at-risk" placement would be an appropriate consideration.



Note: An incarcerated or institutionalized parent must be given an opportunity to plan for the child’s future. The agency must plan and arrange visits with the child at the parent’s place of incarceration or institution/residential facility whenever this is reasonable, feasible, and in the best interests of the child. However, if the parent fails on more than one occasion while incarcerated or in a residential facility (institution) to cooperate with the agency in making such plans or arrangements, termination under the “permanent neglect” provision may then be successful. When this situation applies to an incarcerated or institutionalized parent and the agency plans to pursue termination, an “at-risk” placement would be an appropriate consideration. (*See Chapter 5 for a discussion of diligent efforts on behalf of incarcerated parents.*)

These situations are “high risk,” not only because of the greater complexity they present to freeing a child for adoption, but also because of the probable length of time that may be involved in the freeing process. Even though an “at-risk” placement is made with the foster parents being aware of the potential risks, long delays carry the potential for engendering impatience and disappointment in the foster parent(s) waiting to adopt and/or in the child waiting to be adopted. The continued uncertainty of these situations is a factor that contributes to a higher degree of risk. However, such factors are manageable through appropriate recruitment and preparation of foster families and children, and through continued counseling and casework during the course of the placement. Therefore, legal risk placements of even these high-risk categories of children may be appropriate.

B. CHILDREN WHO ARE LEGALLY FREE FOR ADOPTION

Children who are legally free for adoption must be placed in adoptive homes within six months of being freed. Such placements must be documented in the progress notes for each child. [18 NYCRR 430.12(e)(1)(i)]

Once the child is placed in an adoptive home, the adoption must be finalized within 12 months. [18 NYCRR 430.12 (e) (3) (i)] OCFS regulations require that agencies “recognize that any child who is legally free is adoptable.” [18 NYCRR 421.8 (a)]

When an Appeal of TPR is Pending

Either the agency or the parent may appeal an unfavorable decision of the Family Court (or Surrogate’s Court) in a termination proceeding. State law limits the time in which a notice of appeal can be filed. An appeal must be initiated no later than 30 days after the entry and service of the order to which the appeal is related (35 days if served by mail). During the course of an appeal of a Family Court (or Surrogate’s Court) order, the most recent disposition made by the court is generally continued and the child usually will continue to be placed as the court has ordered, unless a stay of the court order is granted either by the trial or appellate court.

1. Subsidy

For all children freed for adoption, the child's eligibility for adoption subsidy must be assessed [18 NYCRR 421.8(c)]. It is the responsibility of the local district to assess whether the child may be eligible for adoption subsidy and to document that assessment in the case record.



RESOURCES

- See Chapter 12 of this guide and Chapter 1B of the Eligibility Manual available at <http://www.ocfs.state.ny.us/main/publications/eligibility/> for detailed information about adoption subsidy.

If the child does not appear to be eligible for the adoption subsidy and the prospective adoptive parent(s) or the foster parent(s) indicate an inability or unwillingness to adopt the child without subsidy, the LDSS or the authorized agency must look for an alternative adoptive placement for the child. The caseworker must document the efforts made to locate adoptive parents willing to adopt the child without subsidy.

From the date of the adoptive placement until the date of the court order finalizing the adoption, the local district is required to make these payments as foster care payments, *except* in two situations:

- the child is in the guardianship and custody or care and custody of the LDSS, is freed and placed for adoption, is eligible for adoption subsidy, and is to be adopted by approved adoptive parents who are *not* also certified or approved foster parents; or
- the adoptive parent is not or cannot also be certified as a foster parent.

In these cases, adoption subsidy payments begin on the date of placement with the approved adoptive parents (*see Chapter 12 on subsidy*). Until the adoption is final, medical benefits must be continued for all children placed for adoption based on the child's status as a foster child still in the custody of the local social services commissioner. [18 NYCRR 421.24(b)(2); 18 NYCRR 421.24(c)(2)(ii)]

New Requirement: Adoption Subsidy to Age 21

Effective October 1, 2010, after it is determined that a child is an eligible handicapped or hard-to-place child and a subsidy agreement is in effect, in certain circumstances the local district is required to make monthly payments to the adoptive parents for the child until he/she reaches the age of 21, as long as the adoptive parents remain legally and financially responsible for the support of the child and continue to provide any support to the child.

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) requires that Title IV-E foster care and

adoption assistance eligibility be extended to age 21. The change resulting from this law relevant to adoption is that for otherwise Title IV-E eligible, hard-to-place adopted children, federal reimbursement is available if the child was 16 years of age before the adoption agreement became effective and the child is:

- 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 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 information in the case plan of the child.

OCFS will issue an Administrative Directive (ADM) titled “IV-E Foster Care and Adoption to Age 21,” to provide guidance on this issue. The ADM will be posted on the OCFS website under “Policy Directives.”

2. Helping to Prepare the Child for Placement

Caseworkers should become familiar with, and skilled in, techniques that help prepare children and youth for adoption and are appropriate for the child’s age and development.

Caseworkers and families also can be instrumental in helping the child successfully transition to an adoptive placement by being mindful of the needs of the child in the context of his/her age; mental and physical health; personality; and cultural, ethnic, religious and/or racial experiences.

A child or youth has been prepared successfully for adoption if¹:

- He/she has an understanding of his/her family and placement history.
- His/her wishes have been considered.
- His/her emotional, physical, psychological, social, and chronological development has been considered.
- Appropriate assessment tools have been used to gather accurate, comprehensive information about the child and family.
- A treatment plan that reflects the needs and wants of the child has been implemented.

¹ National Child Welfare Resource Center for Adoption (2010). *Child/Youth Assessment & Preparation*, Spaulding for Children, p. 42.

- The caseworker has collaborated with everyone who has involvement with the child.
- Adequate documentation of past services provided, current services being received, and future services needed has been made.
- A presentation plan has been made.
- The child or youth has been assisted to establish a transition plan.

3. Referral of Freed Children to OCFS/NYSAS (“Photolisting”)

Except when a Waiver of Referral (see Part 4 of this chapter) is authorized, a child must be registered with OCFS/NYSAS within 10 business days after the child is legally freed if he or she has been in foster care for at least three months and is not in an adoptive placement. A photo and a written description of the child should be prepared while the child is in the process of being freed so they can be sent to OCFS/NYSAS within the 10-day time frame (18 NYCRR 420.2, 421.8).

a. Photolisting Process through the Adoption Album

In New York State, the child must be registered through the OCFS/NYSAS *Adoption Album*. Registering the child with other photolisting services does not fulfill this requirement. [SSL §372-f; 18 NYCRR 420.2 and 421.8]

The Adoption Album—Our Children, Our Families (“the Adoption Album”) includes an online photolisting process. It also includes the Family Adoption Registry and an online process for matching and searching for photolisted children and prospective adoptive families. Caseworkers can use a training manual, titled *The Adoption Album Training Manual* to guide them through the details of these processes, including photolisting.

The manual is available on the OCFS intranet site at http://ocfs.state.nyenet/adopt/AdoptionAlbumTrainingManual_Oct08.pdf and on the Internet at <http://www.ocfs.state.ny.us/adopt/assets/AdoptionAlbumTrainingManual>

Since the automation of the Adoption Album, OCFS no longer prints and distributes hard copies of the photolisting, formerly called “the Blue Books.” These books and periodic updates were distributed for decades to over 700 agencies, parent groups, libraries, and other public locations. Caseworkers may continue to receive requests for the Blue Books or hear people in the community refer to them. Caseworkers will need to help community groups make the transition from the hard-copy Blue Books to the online Adoption Album. The print function on the Internet webpage of each child and can be used to print pages for interested families.

The automated photolisting process allows caseworkers to submit an electronic photolisting referral and upload digital photos to OCFS/NYSAS. It is no longer necessary to send a hard copy of the photolisting materials. If, however, caseworkers are unable to scan or upload digital photos, they will need to print out the referral and mail it to OCFS along with the hard copy photo. (The hard copy photo should be at least 2 inches by 3 inches in size and should be clearly marked with the child’s name, agency, and CIN

number or referral ID). Up to three photos can be submitted for each child. The information transmitted to OCFS registers the child for photolisting on the Internet.

Caseworkers access the Adoption Album via their Lightweight Directory Access Protocol (LDAP) account with a specially assigned password. Only authorized users can access information maintained in the Adoption Album. Caseworkers needing assistance in getting access to or locating their LDAP account should contact their local information technology staff. The public accesses the Adoption Album at www.ocfs.state.ny.us/adopt/ where limited information describing the children is available.

The automated photolisting process includes information that the caseworker must enter, as well as information that is pre-filled from CONNECTIONS, such as demographics, information about health and education, and a list of siblings. Most of this information can be modified for the photolisting and additional information can be added. Included in the listing is an optional “Narrative Written by the Child,” which is written in the first person in the child’s own words. Caseworkers are encouraged to have children write their own narratives (even if it is only a few sentences), especially when they are older and can express what they would like in a family or what they would like the family to know about them (if appropriate).

The caseworker is allowed to edit the photolisting only until the time the referral is submitted to NYSAS. After that time, caseworkers use the “Change Request” process within the automated Adoption Album to update and edit the referral. These updates can include a change to the child’s status, a change in the child’s own narrative, a change in the child’s needs, and caseworker comments. Workers should consult *The Adoption Album Training Manual* for more information on making change requests.

The photolisting renewal to update an existing listing of the child is handled in much the same way, through the automated system. (*See also the section below regarding 18-month updates.*)

b. Photolisting Siblings Together

State law, regulations, and adoption practice guidance emphasize the importance of keeping siblings together when they are placed in foster care or with adoptive families, unless such a placement is not in the best interests of one or more of the siblings. (*See Section D, “Placement of Siblings Together for Adoption,” for more information about sibling placements.*)

Photolisting siblings together who are freed and available for adoption is one tool for helping siblings be adopted by the same family. Each sibling must be referred to OCFS/NYSAS for photolisting within the required time frames described previously in this chapter. Therefore, if siblings are freed on different dates, the dates by which they must be referred for photolisting will be different. Once the first sibling freed and referred is photolisted, however, one or more siblings who are subsequently freed can easily be added to the photolisting. The instructions for doing so are included in *The Adoption Album Training Manual*.

c. Disapproved and Incomplete Photolistings

If OCFS/NYSAS finds the photograph and/or summary submitted for photolisting to be unacceptable, it will notify the agency that a new photograph or summary is required. The agency will have 30 calendar days to submit a revised referral. However, if the agency submits a partial referral without a photograph or complete narrative, the child will be considered unregistered, and there will be no 30-day extension. The agency will also receive an email notifying them that the child has not been registered.

d. Adoption Album Inquiries

After a child is photolisted, a family or agency that wants to receive more information about the child may contact the caseworker at the telephone number included on the photolisting. Caseworkers should be prepared to receive these phone calls and to discuss the child with the prospective family without divulging any confidential information.

Caseworkers should promptly return phone messages from prospective families, even if the specific child the family is calling about is no longer available. The family may be a potential resource for another child. The caseworker should engage the family in a discussion about the adoption process in general and other available children to see if this may be an appropriate option to explore. Agencies are encouraged to retain home studies of inquiring families if similar children are available, so that, even if the child who was the subject of the inquiry is not placed with the family, other waiting children in the agency may be presented to the family for consideration.

Caseworkers with permission to access the Adoption Album search functions may conduct an automated search of children on their caseload who match the characteristics identified by prospective families. These features may also be used to enter information about a waiting child on their caseload and search the system for families that are willing to consider adopting a child with characteristics that match those of the waiting child. This search feature is one more tool caseworkers have available to them for the recruitment process. Any person who applies to adopt a handicapped or hard-to-place child must have his or her name, address, and additional pertinent information in the Family Adoption Registry. (*See Chapter 10, Section I: “Adoption Album—Search and Match Procedures.”*)

e. 18-Month Updates

Information on waiting children must be updated in The Adoption Album every 18 months. New referrals, including updated photographs and written descriptions, must be submitted by the time the child’s 18-month deadline has arrived. This requirement applies to all children who are still in the Adoption Album at 18 months after listing, including those on hold. (*See “Placing a Photolisting on Hold” below.*)

Agencies will receive notice of an approaching 18-month deadline through an email notice generated from the Adoption Album to both the caseworker whose user ID is listed in the referral and to the agency photolisting contact. Notice from NYSAS normally begins six to eight weeks before the due date. In the case of infants, agencies may wish to update the photographs earlier than 18 months.

4. Impact of Child Status on Photolisting Requirements

a. Child Requires Immediate Photolisting

If the child is not in an adoptive placement and does not qualify for any waivers or delays, photolisting is required within 10 business days of freeing.

b. Photographs and Summaries

While the child is in the process of being freed for adoption, the agency should arrange to have a high-quality photograph taken of the child. The agency also should prepare a summary that will be the basis for the description in *The Adoption Album—Our Children, Our Families*. The material, including the summary, must be sent to OCFS by the 10th working day after the child is freed.

For purposes of photolisting, a child is considered freed once the court order terminating parental rights is received by the agency, a surrender is signed, or the child's care and custody have been transferred to an authorized agency because agency pursuant to Article 10 of the FCA or section 384-a of the Social Services Law and either (1) both of the child's parents are deceased, or (2) one parent is deceased and the other parent is not a person entitled to notice of the adoption proceeding 18 NYCRR 420.1(a).(1)&(2).

Photography Guidelines

- The photograph must be clear and in focus.
- The child must be the only person in the photograph, unless the picture is of a sibling that will be placed together. No other persons, such as foster parents, social workers, neighbors, etc., may be in the picture.
- Photos of siblings should include at least one photo of the entire sibling group AND an individual picture of each sibling, if possible.
- There cannot be any identifying information in the photograph.
- The background should be relatively uncluttered, although an attractive background that does not distract from the child is acceptable. Pay attention to the contrast between the child's skin tone and the background.
- The child must be clearly visible and discernable from his or her surroundings.
- If a child is physically handicapped, it is acceptable to show the handicapping condition.
- The child should be presented as attractively as possible.
- Trained photographers should be used whenever possible. Try to obtain school pictures or photos taken by professionally trained photographers who volunteer their time for the Heart Gallery recruitment program.

Written Summary Guidelines

The summary should be written in the Public Narrative section of the child's referral.

- Include the month and year (but not the day) of birth, along with the child's age (e.g., "John, born in October 2003, is now 7 years old and . . .").
- Include the child's grade level (if in school) and special hobbies or interests.
- Describe the child's unique personality. Any information that can help prospective adoptive families gain an understanding of the child should be included.
- Include a description of the type of family desired (e.g., two-parent, Catholic).
- If the child has siblings with whom they are not being placed, include a description of the contact that is being maintained.
- In the last paragraph, note special circumstances that may make the placement difficult (e.g., "foster parents do not wish to adopt, and the child will have difficulty separating from them").

The Adoption Album also allows for a narrative written by the child. Caseworkers should encourage children to write their own narratives to be included in the referral.

The Caseworker Comments section of the referral is only available for viewing by caseworkers and should include any significant information about medical, physical, behavioral, emotional, scholastic, or developmental handicapping conditions. As much as possible, the specific handicapping conditions should be described. Diagnoses or sensitive information regarding a child should go in the caseworker narrative section on the Intranet version of the Adoption Album and not in the public narrative that can be viewed on the Internet.

c. Waiver of Referral

There are two circumstances under which an agency cannot refer a child to OCFS/NYSAS, also known as a waiver of referral. These are:

- 1) The child has been placed with a foster parent with a signed Adoptive Placement Agreement or the foster parent has expressed—in writing—an interest in adopting the child (Intent to Adopt). While agencies may develop their own form for this purpose, OCFS has provided a suggested "Declaration of Interest in Adopting" form for agencies that do not have a form for this purpose.

The Declaration of Intent to Adopt is available on the OCFS intranet at:
<http://ocfs.state.nyenet/admin/forms/adoption/word2000/ocfs-7060%20declaration%20of%20intent%20to%20adopt.doc>

Any comparable form must include, at a minimum:

- a statement that the adoptive parent was informed that the child was freed and available for adoption, or in the case of an expedited adoption, that the child is to be freed for adoption; and
- a statement that the foster parent understands that by signing the form he/she is indicating a written intent to adopt the child. Written documentation of the intent to adopt should be directly related to the freeing of the child for adoption.

In the case of an expedited adoption, the forms should be signed and dated as soon as the goal of adoption is set and no later than the date the waiver of referral code is entered into CCRS. The signed form/letter must be placed in the child's record on or before the date the waiver of referral code is entered.

Caseworkers should be aware that there are cases in which the foster parent signs the Declaration of Intent to Adopt form, but then insufficient progress is made toward adoption finalization for an extended period of time. Progress toward finalization should be carefully monitored and reassessed on a regular basis, including at the service plan review. If progress is not made toward finalization in a timely manner, depending on the case circumstances, consideration of an alternative plan should be given.

If the foster parent withdraws his/her interest in adopting the child or is disapproved as an adoptive parent for the child at any time before the adoption is finalized, the child must be referred for photolisting to OCFS/NYSAS (by submitting an online referral, including a written description and photograph).

- 2) The agency has identified two or more potential placements for the child, or a family has been selected to adopt the child. If two or more potential placements are identified, or if a family has been selected to adopt the child, this waiver allows agencies up to nine months to determine the most appropriate placement for this child. However, if the child has not been placed into one of the adoptive homes within nine months of the date the child was freed for adoption, the child must be referred to OCFS/NYSAS through the online referral process, including a submission of a written description and photograph [18 NYCRR 420.2 (d)(2)].



Note: To indicate a waiver of referral, The agency must enter the CCRS code (*see CCRS Coding Guide, Appendix Chapter 8*) that will indicate the reason a freed child does not have to be referred to NYSAS. This will allow NYSAS to track the legal status of these children and monitor the required time frame for children for whom two or more placements have been identified.

d. Waiver of Photolisting

An agency may request that photolisting of a freed child be waived when:

- the child has been placed with a relative within the third degree of the parents of the child,²
- the child does not have a permanency goal of adoption, or
- OCFS determines that the photolisting of the child continues to be contrary to the child's best interests (the child must be referred to OCFS/NYSAS if the child's goal changes to adoption); or
- the child is 14 years or older and will not consent to his or her adoption (the child must be referred to OCFS/NYSAS if the child changes his or her mind and agrees to be adopted).

To request a waiver of photolisting due to a child being age 14 or older and not consenting to adoption, agencies must document this in the case file and enter the appropriate code into Child Care Review System (CCRS) indicating that a waiver is being requested because the child is 14 or older and refuses adoption. There is no CCRS code that specifically indicates that a child has been placed with a relative and does not have a goal of adoption; the child's permanency goal in CCRS in this circumstance should not be adoption. (*See Appendix Chapter 8 for the CCRS codes related to adoption milestone and activities.*)



Note: As noted earlier in this section, a waiver of photolisting is not the same as a waiver of referral to OCFS/NYSAS.

Although the case record must include the details of the refusal, no further documentation is required by NYSAS other than the corresponding CCRS code. If the child was previously photo-listed, NYSAS will withdraw the photolisting from The Adoption Album.

While children age 14 and older can refuse to be photolisted and adopted, efforts should be made to help them reach a decision that is in their best interests. Casework with such children should focus on assessing and developing their capacity to form attachments to other families and allaying their fears of the unknown. For older children, who may have been in a foster home for a considerable period of time, the help of foster parents in preparing them for adoptive homes is essential, especially in cases where the foster parent is unable or unwilling to adopt. These children should also be exposed to, and be allowed to interact with, children who were adopted when older and parents who adopted older youth.

² "Relatives within the third degree" applies to the parent's first, second, and third degree of relatives as follows. Examples of first degree relatives include a spouse, child, or parent. Second degree relatives include brothers, sisters, half-brothers, half-sisters, grandchildren, and grandparents. Third degree relatives include uncles, aunts, nephews, nieces, great-grandparents, and great-grandchildren.

For youth who continue to refuse to accept a new family, casework counseling should be provided to help them understand the consequences of their refusal. Referrals to other service agencies and professionals may be made so that the value of permanency and adoption is understood and appropriate. When it becomes clear that the youth fully understands the consequences of not wanting to be adopted, efforts must be made to review the case, and plans should be made and implemented to change the permanency planning goal to reflect the youth's decision. The caseworker should continue to suggest adoption as an option to the youth periodically and be prepared to pursue adoption if he or she expresses a willingness to reconsider this option.

e. Removal of Waivers

When the child's circumstances change to the point that the reason for the waiver of referral is no longer the case, the child must be referred to OCFS/NYSAS. It is the caseworker's responsibility to refer the child to OCFS/NYSAS and photolist the child unless there is an appropriate reason to request a waiver of photolisting. The caseworker should follow the instructions in *The Adoption Album Training Manual* to submit the referral to OCFS/NYSAS.

f. Photolisting Required by Delay in Publication Requested

The law allows photolisting of a child to be delayed when OCFS determines that photolisting is not in the child's best interests because the child is not emotionally prepared for an adoptive placement. In each circumstance in which photolisting can be delayed, the appropriate CCRS code should be entered to reflect the reason for the waiver of photolisting. The list of CCRS codes is included in the Appendix of this chapter. [SSL 372-f(4)(a);18 NYCRR 420.2 (b)]

To request a delay in photolisting, an agency must submit a photograph and written description to OCFS and indicate in the referral that the photolisting is not in the child's best interests because the child is not emotionally prepared for adoption. The agency must provide a written statement from a psychiatrist, psychologist, or certified social worker verifying that the child is not emotionally prepared for an adoptive placement. If the statement is incomplete or insufficient, NYSAS may request additional information, which the agency must supply within 15 working days of notification from NYSAS.

NYSAS will inform the agency whether the request for a delay is approved or disapproved by indicating the status in the referral. A delay in photolisting will be given for a *one-time period of six months* starting from the date the child was referred to NYSAS. If the child is not placed in an adoptive home by the end of the six-month period, he/she will be immediately photolisted. There will be no extensions given on delays.

To comply with the law, while requesting a delay in photolistings, the following procedures must be followed:

- All children who are not formally placed in an adoptive home, or who do not fall under the category of waiver of referral or waiver of photolisting (*see Section B.5*), will be required to have a completed referral in the Adoption Album. This includes a summary and high-quality photograph sent to NYSAS for formal registration. This photolisting must meet all requirements for registration with NYSAS as detailed above.

- The entire online referral in the Adoption Album (with the exception of the caseworker narrative and the child's own narrative, which are optional fields) must be completed, along with the photograph and the "emotionally not prepared for adoption" documentation.

Based on the information provided, NYSAS will take one of these approaches:

- the photolisting will be delayed for six months when the above procedure has been followed; or
- the child will be automatically photolisted because the delay request does not meet the standards outlined.

g. Changes in Photolisting Status

In some circumstances, a caseworker may need to request a change in the photolisting status of a child after the referral has been submitted to OCFS/NYSAS for approval or the child has already been photolisted. The following is a list of the only circumstances under which a change in photolisting status may be requested:

- Child is not freed.
- Child has been discharged from foster care (including, but not limited to, discharge to a parent or relative).
- Child is over 14 years of age.
- Child has died.
- There are multiple inquiries about adoption of the child.
- The child is visiting with prospective adoptive parent(s).
- The child is not emotionally prepared for adoption.
- Multiple potential families have been identified for the child.
- The foster parents intend to adopt.
- The child is AWOL.
- There is a kinship placement and the permanency goal is not adoption.
- The child has been placed for adoption.

The caseworker submits the request for a change in photolisting status to OCFS/NYSAS through the automated Adoption Album. OCFS/NYSAS reviews the request and emails the caseworker of the decision to either approve or disapprove the request. If the request is disapproved, the reasons for the disapproval are included in the email. Once the change in status is approved by OCFS/NYSAS, the caseworker (or other agency staff, depending upon local practice) must enter the code in CCRS that corresponds with the reason for the change in photolisting status (*see CCRS Coding Guide in the Appendix Chapter 8*).

h. Placing a Photolisting on Hold

In some instances, the request for a change in photolisting status will result in OCFS/NYSAS placing the child's photolisting "on hold." OCFS/NYSAS created the Hold category to help agencies respond to inquiries on photolisted children who have plans for placement in process but are still required by law to be photolisted. There are categories of Hold codes that group children with similar situations as those in the waiver of referral/delay categories. While some of the Hold Codes appear similar to the waiver of referral/delay choices for photolisted children who have a current, active photolisting in place, because of the status of the child being, they are handled differently and result in a hold.

Once a child has been photolisted, only Hold Codes (*not* Waiver Codes) should be used to reflect the child's status. Examples of hold reasons and time-frame guidelines are:

- Too many inquiries (30 days)
- Child visiting (60 days)
- Not emotionally prepared for adoption (6 months)
- Two or more potential families in place for this child (9 months)

It is the agency's responsibility to keep NYSAS informed of the child's situation.

i. Withdrawal of Photolisting

To withdraw the referral of a child already photolisted, the proper CCRS code indicating the type of change must be entered into CCRS (*see CCRS Coding Guide in Appendix Chapter 8*), and a change request must be completed and sent to OCFS/NYSAS through the automated Adoption Album. The referral is withdrawn if the child:

- has been placed for adoption;
- has reached 18 and does not wish to be adopted;
- has been discharged from a foster care agency in New York State; or
- has died.

[18 NYCRR 420.4]

In addition to these, an adoptive placement (A550) or child turning 14 and not consenting to adoption (A516) can result in a withdrawal of a previously photolisted child

k. Impact of an Adoption Disruption on Photolisting

If the APA is signed and then the family states it no longer wishes to adopt, the placement is considered disrupted. The date of the disruption is considered to be the new freed date for the child **for the purposes of photolisting**, and the required time frames for photolisting the child are based on that new freed date. In such instances, the caseworker must refer the child to the OCFS/NYSAS Adoption Album unless there is another reason for a waiver. [18NYCRR 430.12 (e)(2)(iii)(a)]

C. SERVICES AFTER ADOPTIVE PLACEMENT IS IDENTIFIED

1. Visits with Prospective Adoptive Parents

Once prospective adoption parent(s) - who are not the child's current foster parents are identified for a child, the next step is for visiting between the child and parent(s) so they can get to know one another. The frequency, duration, and location of the visits should be based on the child's individual needs and should be developmentally appropriate. For example, for young children with minimal or no special needs, only one or two visits with prospective adoptive parents may be necessary before the placement occurs. With older children and children with special needs, more visits may be necessary for both the child and prospective adoptive parents to ensure that both are ready for the placement. While a long period of visitation is not necessary in many new placements, frequent visits, including overnight or weekend, may be arranged to prepare for and expedite the placement. [18 NYCRR 421.18(f)]

With most children, share information about the family as it is uncovered and verified (with permission). With some, it's better to share little until family members have been engaged, background information is complete, and the team has made a clinical judgment to approve initial contact with the child. Consult with those who know the child best about how this information should be handled.

Below are some steps for caseworkers to consider in helping prepare the child for initial visits with prospective adoptive parent(s):³

- Arrange for phone calls, letters, pictures, or email between the child and new family members before the initial meeting to help break the ice.
- Tell the child what the boundaries of the initial meeting will be and how the meeting will be structured—how long it will last, where it will take place, who will be in charge, how the child might participate, and how it will end.
- Discuss with the child if that seems comfortable and if there are changes the child would like to make.
- To make the visit successful and comfortable for the child, discuss the child's expectations and concerns, including safety, and develop a plan for how to address them.
- Introduce the child to the family member or other adult in a supervised setting.
- Talk with the child about his or her expectations and help them to sort these through (e.g., a child may expect to go home with the family member immediately or may be apprehensive about meeting the family).
- Ask the child if he or she would like to bring anything to share with the family, such as art work, crafts, or a DVD.

³ Louisell, M. (2008). *Six Steps to Find a Family: A Practice Guide to Family Search and Engagement (FSE)*. Hunter College School of Social Work & California Permanency for Youth Project: National Resource Center for Family Centered Practice and Permanency Planning, p. 38.

2. Documentation of Placement

a. Progress Notes

The caseworker must document the placement of the child in the adoptive home and the efforts made to find an appropriate adoptive placement for the child. If a legally freed handicapped or hard-to-place child is not placed in an adoptive home within six months, the record must indicate that an inquiry was made of the Family Adoption Registry (*see Chapter 10*) within three months of the child being freed, along with the result of the inquiry [18 NYCRR 424.4(a)]. It is important that the caseworker document all inquiries from potential adoptive parents about the child, the follow-up, and final outcomes of the inquiries.

When a child has been placed for adoption, the date of the adoptive placement and the date of finalization must be included in the progress notes.

b. Family Assessment and Service Plan (FASP) Review

For all children freed for adoption, every FASP must include at least the following:

- a description of activities related to exploring of alternative permanency resources, including the child's foster parent(s), if any;
- a description of activities undertaken to prepare the child for adoption or other permanency plan; and
- actions taken to place the child in an adoptive home or other permanent living arrangement, including barriers to placement and activities undertaken to overcome the barriers.

For children placed in adoptive homes before the adoption has been finalized, the FASP must include a description of the efforts made to finalize the adoption. If the child has been in the adoptive placement for more than 12 months and the adoption has not been finalized, the next required Reassessment Family Assessment and Service Plan Review must include documentation as to the reason(s) for the delay.

The caseworker should note that a child is in an adoptive placement only when the person(s) wishing to adopt the child have signed an adoption placement agreement (APA). When foster parents have expressed an interest in adopting their foster child by signing an Intent to Adopt form, but have not yet signed an agreement, this is not considered an adoptive placement.
[18 NYCRR 430.12(e)]

In the case of a Native American child placed for adoption, the case record must document the efforts made to comply with the order of preference required in the federal Indian Child Welfare Act (ICWA) and OCFS regulation 18 NYCRR 431.18. This information must include efforts made by the agency to comply with the order of preference required by ICWA and must be made available to the child's Indian tribe and the Secretary of Interior upon request. (*See Chapter 11 for more information.*)
[18 NYCRR 430.12(e)(iii)(b)]

D. PLACEMENT OF SIBLINGS TOGETHER FOR ADOPTION

1. Requirements

NYS regulations and policy require that siblings and half-siblings who are freed for adoption be placed together in a pre-adoptive home unless placement together is determined to be contrary to the health, safety or welfare of one or more of the children [18 NYCRR 421.18 (d) (3) and 421.2 (e)]. Underlying NYS regulations is the understanding that the sibling bond is important to the children's development and emotional well-being. Sibling contact gives children continuity with their family, even when circumstances require separation from their parents. 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.

Given the expectation that siblings will be placed together, agencies must make diligent efforts to identify a foster or adoptive home willing and able to accept the placement. These include:

- Identifying a relative who is willing to provide kinship care to all of the children (or some of them) while providing opportunities for continuing contact among siblings.
- Informing foster parents when a child placed with them has minor siblings, and, if so, whether they are free for adoption.
- Photolisting together siblings who are freed and referred to OCFS/NYSAS for photolisting (*see Section B.3.a*).

In recognition of the special difficulty of placing more than one child at a time in an adoptive home, New York State, like all states, includes membership in a sibling group as one category of "special needs" (hard-to-place) that may qualify for adoption assistance.

To further facilitate the placement of siblings together, the date certain for the permanency hearing for a child who is entering foster care must be set to coincide with the previously established date certain of a sibling or half-sibling who is also in foster care, unless the sibling or half-sibling entered foster care as a result of a Juvenile Delinquency (Family Court Act Article 3) proceeding, or a Person in Need of Supervision (PINS) (Family Court Act Article 7) proceeding [FCA §1089(a)(2)].

If the child has siblings freed for adoption, the caseworker should assess and document the appropriateness of placing the siblings together. Any assessment that placement would be contrary to the best interests of one or more of the children must be made after consultation with, or an evaluation by, other professional staff, such as a licensed psychologist, psychiatrist, other physician, or certified social worker. Factors to be considered include, but are not limited to:

- Age differences among the siblings;
- Health and developmental differences among the siblings;
- Emotional relationship of the siblings to one another;

- Services needs of each child; and
- Attachment of each sibling to parent(s), extended family members, and foster parent(s)

[18 NYCRR 421.18(d)(3)]

The child's progress during placement in foster care should be summarized. Attachments to foster parents, children in the foster homes, and behavior in the home as they may impact on adoptive placement should be considered. The child's strengths and abilities should be discussed. The handicap(s) of children with special needs should be discussed. Assessments from other providers should be integrated into the summary and must be included in the case record. [SSL 372-b (1)(b); 18 NYCRR 421.8(f)]

2. Siblings Not Placed Together

If siblings are not placed together, agencies must discuss with the adoptive parents their willingness to facilitate contact between the adopted child and any siblings, and inform the adoptive parents of the availability of services, if any, to help establish and maintain sibling contact. To separate siblings, an assessment or consultation with other professional staff, such as a licensed psychologist, psychiatrist, or other physician, or certified social worker, is required.⁴ Caseworkers must document the reasons for separating siblings in the Family Assessment and Services Plan (FASP).

3. Continued Contact Among Siblings Not Adopted Together

After a child is adopted, continuing contact with siblings may be allowed in several ways⁵:

A contact agreement, executed as part of a conditional surrender, may provide for communication or contact between the child and the child's birth parent(s) and sibling(s), if any. The agreement is signed by the adoptive parent(s), the birth parent(s), the agency having care and custody of the child, and the child's law guardian. It must be incorporated into the court order. If the contact agreement provides for contact with a child's sibling who is over the age of 14, the sibling must sign (consent), or the agreement is not enforceable as to that sibling.

The parties to the contact agreement or the attorney for the adoptive child may go to court and ask that the agreement be enforced if the adoptive parent decides later to discontinue the contact with siblings. The law provides enforcement procedures for post-adoption contact agreements based on the best interests of the child. The law also provides that failure to comply with the terms of a post-adoption contact agreement cannot disrupt an adoption. [DRL §112-b]

A judge who finalizes the adoption may order that contact between the child and the child's birth family be allowed after the child has been adopted.

⁴ NYS Office of Children and Family Services. (2004). *Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State* (07-OCFS-INF-04), p. 4.

⁵ Ibid., p. 17.

An informal arrangement between adoptive parents and birth parents, (e.g., kinship adoptions) may allow contact between the child and birth family, but by statute such an agreement is not enforceable. OCFS, however, encourages contact with the birth family to take place with formal agreements where the rights of the parties may be enforced.

Where a post-adoption contact agreement does not provide for sibling visitation, a sibling (or, if underage, a person acting on his or her behalf) may petition the court for visits with an adopted sibling (DRL Section 71). A significant consideration in such cases is whether there had been a substantial and meaningful relationship between the siblings before the adoption.

It is important to remember that termination of parental rights or surrender by the birth parents does not necessarily terminate the rights of the child's siblings. Older youth who are adopted or wish to locate a sibling who is adopted can contact the Adoption Information Registry of the New York State Department of Health. The registry can help locate family members and even facilitate a reunion. There are age requirements associated with registering. For information, see www.health.state.ny.us/vital_records/adoption.htm.



RESOURCES

For more information about sibling placements, see:

- *Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State*, published as an Informational Letter by OCFS (07-OCFS-INF-04) is available at: http://www.ocfs.state.ny.us/main/policies/external/OCFS_2007/
- *Foster Care, Adoption: Requirements for Sibling Placement, Visitation and Communication*, issued as an Administrative Directive by OCFS (92-ADM-24) is available at: <http://www.ocfs.state.ny.us/main/policies/external/1992/>

E. OVERCOMING BARRIERS TO ADOPTION

Despite federal and state legislation and policies that require timely adoption of children who are legally freed and have a goal of adoption, hundreds of these children remain in foster care without prospective adoptive parents. Many of these children wait years for an adoptive placement and some are never adopted, leaving foster care without a permanent family. It is critical that caseworkers and supervisors identify barriers to adoption for legally freed children on their caseloads and develop strategies for overcoming identified barriers.

1. Children Who Wait the Longest for Adoption

The children waiting longer periods of time in foster care for adoptive placement are, for the most part, members of “special needs” populations, including those with emotional or physical disorders, children older than six, children of color, and members

of sibling groups.⁶ A 1998 study done in New York State by a Cornell University researcher found that the children waiting the longest to be adopted from foster care in NYS were significantly more likely to be those with substantial disabilities, were more likely to have siblings in foster care, and a higher proportion were male and black as compared with children who get placed more quickly.⁷

2. A Key Factor: Caseworker Attitudes and Practices About “Adoptability”

A key finding of the 1998 Cornell study was that, in New York State, the attitudes and practices of caseworkers and agencies about the “adoptability” of waiting youth appear to play a significant role in the failure to find permanent placements for some children.⁸ The study questionnaire allowed for in-depth investigation of caseworker beliefs and attitudes about the ultimate success of placement efforts for the children in their care. It led to some surprising results: 41% of caseworkers responded “no” to the question, “Do you think this child is ultimately adoptable?” 28% responded “maybe,” while less than one-third of caseworkers responded “yes.”⁹

When asked their opinions about the most significant barrier to placement for the child in their care, the vast majority of caseworkers stated that the child’s medical or psychiatric condition presented challenges that were “too severe” for most adoptive parents. Caseworkers stated that adequate pre-adoptive training and preparation, intensive post-adoption support services, and realistic expectations would be prerequisites for successful placement of the child.¹⁰

One of the most interesting findings of the study was the fact that interest in adoption had been expressed by prospective adoptive parents at some point in time for more than half the children in the sample: 60% of the youth had received one or more inquiries, and 34% had received more than five inquiries since coming into care. Approximately 36% of youth had received one or more adoption home studies and 11% had received six or more. From these results, it appears that delays in adoptive placement for children in the sample did not result from lack of initial interest on the part of prospective adoptive parents, although the study did not measure whether reduced interest over time on the part of the prospective parents was a factor.¹¹

The researcher concluded: “What is clear from these results (and from the findings reported above regarding prospective adoptive parent recruitment techniques) is that the caseworkers themselves are not convinced of the ‘adoptability’ of the child in their care, and their skepticism appears to be translated into reduced recruitment efforts

⁶ Casey Family Programs National Center for Resource Family Support (2003). *Individualized and Targeted Recruitment for Adoption*, p. 1. Accessed at:

<http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/targeted-recruitment.pdf>

⁷ Avery, R. (1999). *New York State’s Longest Waiting Children, 1998: A Study of New York State Children in Need of Adoptive Families*. Ithaca, NY: Cornell University.

⁸ Ibid, p. 1

⁹ Ibid, p. 1

¹⁰ Ibid

¹¹ Ibid., p. 12.

on behalf of the child.”¹²

3. Individualized Preparation of Teens for Adoption

Barriers to adoption for adolescents include the following:¹³

- Some agencies and caseworkers who do not believe in an adolescent’s adoptability.
- Adoption caseworkers who need a greater understanding of the developmental process that may lead youth in foster care to desire adoption into a family at the age when most young people are expected to want to be separating themselves from their families.
- Adolescents who are not properly prepared for adoption.
- Adolescents who are not given control over the content of their listings and some measure of control over the recruitment and selection process.

To be most effective in recruiting, caseworkers need to be able to invest the time and effort to know each child individually. The value of this effort was demonstrated in a program in Virginia that focused on children over 10, sibling groups of three to five, and children with medical or mental health issues. This agency was able to place 80% of 155 children with a goal of adoption during a three-year grant. They attribute their success to the following activities:

- establishing a relationship with each child;
- providing assessment, preparation, pre-placement, placement, and post-placement services; and
- focusing on permanency resources already in the child’s life.

4. Changing the Initial “No” to “Yes”

It is important for the caseworkers who have relationships with adolescents to help them consider the option of lifetime connections by helping to reframe the initial “No!” into a “Yes,” or “I’ll think about it.” It may initially help young people to review their past connections and experiences to help put their thoughts and feelings into context.

The participation of adolescents in planning their own adoption is critical. Adolescents need to be actively involved in identifying past and present connections that can be explored as potential adoptive resources. Young people 18 and older should be informed by their caseworkers that they can consent to their own adoption and that there is no need for legal proceedings to terminate their parents’ parental rights.

Exploring the permanency option of adoption with all children, and particularly adolescents, is a process that involves multiple conversations over a period of time. Some

¹² Ibid., p. 1.

¹³ Casey Family Programs, op. cit., p. 6 (quoting adoption specialist Virginia Sturgeon at the 2002 Stuart Foundation Convening on Permanence for Older Children and Adolescents).

adolescents are open to, and even enthusiastic about, adoption. Other adolescents are more hesitant or even quite negative about adoption. Caseworkers should discuss sensitively with the youth where the youth might like to belong and address the strong feelings that might underlie a statement by a young person that he or she does not want to be adopted. A concurrent adoption plan must include plans to help the young person find out what underlies his or her reluctance to consider adoption. The youth may raise concerns that include¹⁴:

- “I don’t want to give up past connections.”
- “I don’t want to lose contact with my family.”
- “I don’t want to lose contact with important people.”
- “I will have to change my name.”
- “No one will want me.”
- “I am too destructive for a family.”
- “Families are for little kids.”
- “I don’t want to betray my birth family.”
- “Mom said she would come back.”
- “I want to make my own decisions.”
- “I’ll just mess up again.”
- “I don’t want to risk losing anyone else.”

Caseworkers need to hear the concerns the youth is expressing and help the youth address them, rather than accepting the youth’s initial negative response to discussions about adoption. Some of the areas that can be explored with the youth are listed below. Exploration of these areas can help an older adolescent explore the lifelong importance of a permanent family and can also help identify potential adoptive resources for the youth.¹⁵

- Who cared for you when your parents could not? Who paid attention to you, looked out for you, cared about what happened to you?
- With whom have you shared holidays and/or special occasions?
- Who do you like? feel good about? enjoy being with? admire? look up to? want to be like someday?
- Who believes in you? stands by you? compliments or praises you? appreciates you?
- Who can you count on? Who would you call at 2 am if you were in trouble?

¹⁴ Mallon, G. (2006). *Unpacking the NO! Facilitating Permanency for Older Adolescents*. New York: National Resource Center for Family-Centered Practice and Permanency Planning.

¹⁵ Ibid.

wanted to share good news? bad news?

- Who are the three people in your life with whom you have had the best relationships?
- Would it help to review where you have lived in the past to help you recall important adults in your life?
- To whom have you felt connected to in the past?
- Who from the past or present is someone you want to stay connected to? How? Why?
- How are you feeling about this process? What memories, fears, and anxieties is it stirring up?

5. Child-specific Recruitment of Adoptive Parents

Efforts at recruiting new adoptive families can be categorized in the following ways, similar to recruitment of foster parents:¹⁶

- General recruitment, which uses general messages such as “help a child” or “change a life.”
- Child-specific recruitment, which may be aimed at relatives or other individuals who already know a child, or by using the media to describe a specific child.
- Targeted recruitment, which focuses on the needs of specific groups of children and teens and tries to match them with families who have the specific skills and commitment required to meet the needs of the targeted children.

For some children waiting for adoption, recruitment of adoptive families may require targeted, intensified efforts. It is critically important that the caseworker follow up with individuals who respond to recruitment inquiries and document the substance of the contacts in the case record. While general and targeted recruitment of adoptive parents are discussed in Chapter 9, a discussion of child-specific recruitment is included in this chapter because it is a service to children waiting for adoption. Included below are child-specific strategies that have shown promise in New York and other states. One such practice is adoption panel meetings, also known as permanency panels that meet at the local level to identify child-specific barriers to adoption and strategies for overcoming them. Unfortunately, little rigorous research has been done about the effectiveness of recruitment techniques that could help guide practice and move children to permanency more quickly.

¹⁶ Barbell, K. & Sheikh, L. (2000). *A Community Outreach Handbook for Recruiting Foster Parents*. Washington, DC: Child Welfare League of America.

6. Types of Child-Specific Recruitment

Guidance to the adoption field is becoming more consistent in its recommendations to use child-specific recruitment campaigns for older children and children with special needs. Child-specific recruitment strategies that have been found to produce promising results include:

a. Internet Listings

Photos and video recordings of individual children can be found on the Internet at sites produced by individual agencies such as the OCFS website (www.ocfs.state.ny.us/adopt), regional sites representing several states, or national sites containing thousands of children, such as the AdoptUsKids site sponsored by the federal DHHS Children's Bureau: <http://www.adoptuskids.org>.

In NYS, and as discussed above, this is done through *The Adoption Album—Our Children, Our Families*, which is a current child's photolisting and adoptive parents' registry system to increase a child's visibility to prospective parents and help recruit adoptive families. The photolisting of the child is automated through its Intra/Internet system. This allows a child's photo and description to reach a national and international audience of prospective adoptive parents (*see Section B.3 of this chapter*).



Note: Requirements to photolist NYS children available for adoption are not met by photolisting children on sites other than the Adoption Album. However, photolisting children on other sites, in addition to the Adoption Album, can be a helpful tool in reaching as many prospective adoptive parents as possible.

b. Adoption Exchanges

The description of a specific child may be selected for presentation at a regional or statewide adoption exchange, to local or national foster parents' organizations, or adoptive parents' associations that recruit families. The child's story and picture may also be presented on television or in print media, as well as to community, religious, labor, and ethnic organizations. After each recruitment effort for a specific child, the caseworker should assess the results of the effort and develop a new plan of action if no promising placement possibility is found. Resources should be drawn from neighboring agencies, as well as those within the state and nation.

Note of Caution: Caseworkers must be careful not to disclose confidential information about the child and/or family at such exchanges and forums. Information that may be discussed is the information available to the public through the Adoption Album.

c. Newspaper and Television Campaigns

Some newspapers conduct campaigns that appear in the newspaper, usually once a week and under a name such as "Wednesday's Child." Televised appeals appear on local stations that present individual children or sibling groups waiting for adoption. They are similar to print campaigns and often have similar names, such as "Saturday's Child."

The Evan B. Donaldson Adoption Institute conducted an analysis in 2000 of outcomes of televised, child-specific recruitment efforts in four cities, including New York City. While the results varied by city, 1% of the children were adopted by the end of the data collection period, 17% were in adoptive placements awaiting finalization, and 26% had a possible family identified.¹⁷

d. Heart Galleries

Begun in New Mexico in 2001, Heart Galleries are now held in many states and localities across the country. Displays of photographs taken by professional photographers are posted in public places, often for several weeks during National Adoption Month in November. Many counties and regions in New York State have participated in Heart Galleries for the past several years. Caseworkers should check with their supervisor to see whether their agency participates in a Heart Gallery or wants to consider participating in one as another recruitment strategy.

e. Videoconferencing

The state of Georgia gathers about 22 available children every other month at a host site, which rotates across the state. Interested families can attend at eight different locations with video access and the waiting children are introduced to families through interactive television. Other states, including North Carolina, have used some form of videoconferencing in their recruitment efforts as well.

f. Individual Adoption Plans (IAPs)

Individual adoption planning is one of several recruitment strategies that can be used to locate prospective adoptive parents for children available for adoption. It is not intended to replace broader recruitment strategies but rather to complement and supplement them with the common goal of finding appropriate, permanent adoptive families for children and youth in foster care.

Youth-centered recruitment begins by comprehensively assessing the youth's history before and after entering the child welfare system, including case history, agency files, and previous relationships and bringing this information into the current context. Every effort should be made to involve the child or youth, as developmentally appropriate. Caseworkers can build on this knowledge to proactively search out contacts who might be—or may know of—potential resources for a child or youth needing a foster or adoptive placement, such as relatives and other important people in the child or youth's life.¹⁸

Some of the guiding principles to consider when working with older youth on child-specific recruitment include the following:¹⁹

- Youth must be involved in the process and must have input.
- Many youth do want to be adopted, even if they initially say no.

¹⁷ Ibid.

¹⁸ AdoptUsKids. *Child/Youth-Specific Recruitment*. Retrieved from <http://www.adoptuskids.org/professionalResourceCenter/childCenteredRecruitment.aspx>

¹⁹ Mallon, op. cit.

- Youth need to be involved in recruitment efforts.
- Youth need to be able to identify persons with whom they feel they have connections.
- Youth need to work with professionals who understand them and enjoy working with them.

Steps that caseworkers can take in individual adoption planning include the following²⁰:

1) Carefully review the case record

Review the youth's entire case record in search of anyone who has shown concern for the youth, including former foster parents, former neighbors or parents of friends, members of extended families (aunts, uncles, cousins, older siblings), teachers, coaches, guidance counselors, group home staff, or independent living staff. Given that some youth may have been in care for prolonged periods of time, case records can have many volumes. All volumes should be explored, however, in an effort to uncover clues about possible connections, both past and present. Third-party reviewers can be helpful in the process of uncovering these possible connections, as caseworkers who have been assigned the case may inadvertently miss connections that may be more visible to fresh eyes.

2) Work with youth to identify caring adults

Work with young people to identify caring, committed adults with whom they would like to establish a connection or re-establish a former connection. They should be asked who they feel most comfortable with, who they trust (or with whom they might like to build a trusting relationship), and who they feel they have formed bonds with, (former foster parents, former neighbors, parents of close friends, members of their extended family, group home staff, cafeteria workers, maintenance staff, administrators, teachers, coaches, and work colleagues).

3) Contact foster parents and others known to the youth

Interview the young person's current and former foster parents, as well as group home staff, and child care staff to determine with whom the youth currently has connections. Who calls the young person? Who has had a special relationship with the young person in the past? Who visits the young person and whom does the young person visit? Has the young person formed a bond with any group home or child care staff that might turn into a permanent connection?

4) Provide information about adoption to the youth and family

Engage the youth, his or her parents (if the youth is not currently freed for adoption), foster parents, and prospective adoptive parents in a discussion

²⁰ Ibid.

about shared parenting and ongoing contacts with members of the youth's birth family after the adoption. Youth and parents need help in understanding that although a termination of parental rights ends the rights of the birth parents to petition the court for visits or other contacts with their child, a TPR does *not* prevent the young person from visiting or contacting members of his or her birth family.

5) Keep searching for permanent connections

Identify permanency leads if a record review and interviews with the youth and staff do not yield possible permanent connections.



RESOURCES

For more information about adopting adolescents, see:

- *Adolescents and Families for Life: A Toolkit for Supervisors* by R.G. Lewis and M.S. Heffernan (2000). Boston, MA: Lewis & Heffernan. This is a guidebook for child welfare providers who are interested in developing skills in working toward permanency with adolescents.
- *The Family Bound Program: A Toolkit for Preparing Teens for Permanent Family Connections* by R.G. Lewis and Communities for People, Inc. (2002). Boston, MA: Lewis. This is a guidebook for working with families to promote and prepare teens for permanent family connections developed by Spaulding for Children, Michigan.
- *Facilitating Permanency for Youth: A Toolbox for Youth Permanency*. by G.P. Mallon (2003). Washington, DC: Child Welfare League of America. This is a toolbox for practitioners, policy-makers, and advocates for promoting permanency and lifetime connections for older adolescents.

Chapter Nine

Services to Foster Parents

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A. PREFERENCE AND FIRST CONSIDERATION OF FOSTER PARENTS IN ADOPTION

1. Foster Parent Preference

Foster parents are the primary adoptive resource for children in foster care. When foster parents have cared for a child continuously for a period of 12 months and the child is free, or in the process of being freed for adoption, foster parents must be given preference and first consideration to adopt the child. If the foster parents have not completed an application to become adoptive parents, caseworkers need to determine their interest in adopting the child and explain the procedure for applying to adopt.

Foster parents must be informed if the child in their care who is free for adoption has any siblings or half-siblings who are also free for adoption. These children must be placed together for the purposes of adoption unless it can be documented that such a placement would not be in the best interests of one or more of the children.

If foster parents want to adopt a child who has been in their home for less than 12 continuous months, the agency must accept and prioritize the foster parents' application according to the priority rating established for adoptive applicants (*see Chapter 10 for information about priority ratings*). [SSL 374(1-a) and 383(3); 18 NYCRR 421.2(e) and 421.19(a)-(c)] While foster parents with a child in their home for less than 12 months are not guaranteed first consideration to adopt the child, the caseworker should carefully consider the foster parents' relationship with the child and the foster parents' ability to care for the child.

If the foster parents are interested in adopting, they must indicate their interest in writing, either through the Declaration of Intent to Adopt or Adoption Placement Agreement forms. If the foster parent provides a written Declaration of Intent to Adopt, there is a waiver of the photolisting requirement for the child. [18 NYCRR 420.2(d), 18 NYCRR 421.19]

2. Concurrent Certification/Approval

An applicant can apply for approval as an adoptive parent at the same time they apply to become a certified or approved foster parent. The applicant is not required to submit dual documentation to the authorized agency for such approval. The applicant can submit an application to adopt a specific child in their home or generally to adopt a child who may not yet have been identified. The standards for dual certification/approval of an applicant are essentially the same as those for certification/approval of a foster parent. The only exceptions are the different requirements regarding marital status (*see Chapter 10, Section D.2*) and age. Applicants to adopt must be 18 years of age or older, while applicants to become foster parents must be over the age of 21. [421.16(b), 443.2(c)(1)(i)], 18 NYCRR 443.9]

B. RESPONSE TO ADOPTION APPLICATIONS

1. Acknowledging and Assessing Applications

The agency must acknowledge, in writing, completed applications to adopt from certified or approved foster parents within 10 days of receipt. Caseworkers must assess each application as quickly as possible in the following manner:

- Review the information about the family, including:
 - information obtained in the original foster home study;
 - information from the annual recertification; and
 - information available to agency caseworkers supervising the home and the child.
- Identify those items of information which are lacking or insufficiently current and are needed for an adoption study.
- Identify those areas of family functioning that may need further exploration or strengthening.
- Conduct an adoption study process which:
 - does not repeat information-gathering activities regarding information already available;
 - obtains additional or updated information as rapidly as possible, including the results of any criminal history record check completed on the foster parents and all persons over the age of 18 or over currently living in the home and any safety assessment related to criminal history, if such history exists. [Obtain a criminal history check for all new persons age 18 or older living in the household who have not previously been checked. Updated information will include notice of any arrests subsequent to the original certification or approval and related safety assessments. In addition, if the

foster parent or household member has not had a national criminal history record check through the FBI, one must be completed.];

- inquires of OCFS whether the applicant, or other person over the age of 18 who lives in the home of the applicant, is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment (SCR), and, if the applicant or other person over the age of 18 who lives in the home of the applicant lived in another state at any time during the five years preceding the application includes inquiring of the applicable child welfare agency in each such state for child abuse and maltreatment information maintained by that state's child abuse and maltreatment registry;
- focuses on areas identified as needing further exploration or strengthening;
- clarifies for the applicant the difference between foster care and adoption and the psychological changes that must take place when transitioning from being a foster to an adoptive family; and
- clarifies the issues involved in obtaining an adoption subsidy.
[18 NYCRR 421.19(d)&(e)]

C. ADOPTION STUDY PROCESS

1. Time Frame

The adoption study process for foster parents whose studies have been initiated according to priority for studying adoptive applicants must be completed within the following time limits:

- within two months of receiving the completed application for a child who is legally free; or
- within four months of receiving the completed application when the child is not yet legally free, but in no event more than two months after the date the child becomes legally free. [18 NYCRR 421.19(f)]

2. Completing the Home Study

When an agency intends to approve a foster parent to adopt a child, the caseworker prepares a written summary of the home study and arranges for the foster parent to review the summary, with the exception of any comments by references who have sought confidentiality. The caseworker is responsible for encouraging the foster parent to express their views about any significant aspect of the summary and offer the opportunity to document their reactions as an addendum to the summary. The caseworker and the foster parent must sign the summary after it has been reviewed and any addendum has been attached.

3. Approval of the Home Study

When approving a foster parent to adopt a child already in the foster home, the caseworker must provide the approval in writing. If the child is legally free at the time of the approval, an adoption placement agreement must be signed. The foster parent must be informed that the adoption placement agreement is to be signed and returned within one month of the date of the study approval. If the foster parent does not return the adoption placement agreement within one month, their application to adopt can be considered withdrawn and can result in the caseworker photolisting the child. It is important for caseworkers to work with the foster parents to meet these time frames so that permanency can be achieved timely for the child.

The caseworker should inform the foster parents that they need to hire an attorney to petition the court to adopt the child within three months of the date of the approval letter described above. The caseworker must inform the foster parent in writing that if the petition is not filed within the three-month time period, the foster parents' application will be considered withdrawn and the adoption placement agreement voided. If this occurs, the caseworker will then need to look for another adoptive home for the child and photolist the child. [18 NYCRR 421.19(i)]

If the child is not legally free at the time of approval, the approval letter must indicate that the child is not free. The letter must contain the same agreements and statements to the foster parents that would be given if the child were legally freed for adoption. **Note:** the prospective parent cannot sign an adoption placement agreement until the child is legally freed.

A source of information helpful to foster parents considering adoption is the OCFS publication, "New York State (and New York City) Foster Parent's Guide to Adoption", which is available on the OCFS website in both English and Spanish at <http://ocfs.state.ny.us/main/fostercare/publications.asp>

4. Disapproval of the Home Study

The agency may disapprove the foster parent's application to adopt either during or at the conclusion of the home study only in accordance with the disapproval criteria outlined in OCFS regulations. The disapproval decision must be made by at least two staff members in conference, one of whom must be at a supervisory level. The criteria for disapproving a home study are included in the regulations [18 NYCRR 421.15(g) and 421.27] and discussed in Chapter 7 of this guide.

The agency must send the foster parent a letter describing the disapproval decision and the reasons for the decision. The disapproval letter must offer the foster parent the opportunity to discuss the decision in person with the caseworker's supervisor and must notify the foster parent that they may apply for a fair hearing. The letter must state that the child is available for adoption by other persons and that the child will be immediately photo listed.

If the child is not removed from the foster home within three months of the disapproval letter, agencies must document in the child's case record why the family

continues to be acceptable as a foster family for this child, but is not acceptable as an adoptive family. Documentation must be made in the foster family record, if recertification is granted, as to why the home continues to be suitable for foster care but not for adoption.

Right to a Fair Hearing

Foster parents who have applied to adopt are entitled to a fair hearing if:

- (a) their application to adopt is denied; or
- (b) their home study is not acted upon within six months of their application to adopt; or
- (c) their application for the adoption of a particular child was denied or was not acted upon within 60 days of the request; or
- (d) their application to adopt the child was denied or delayed in whole or in part based on the location of the foster parents outside of the social services district, or state, of the agency that has custody of the child.

5. Discontinuation of the Home Study

The adoption study of a foster parent can be discontinued only by mutual consent of the agency and the foster parent [18 NYCRR 421.15(f)]. The caseworker must document in the foster family's case record the discussion leading to the mutual agreement to discontinue the study. The agency must inform the foster parent, in writing, of the discontinuation of the study, and the letter must also indicate that the child is available for adoption by other persons and will be immediately photolisted. [18 NYCRR 421.19(h)]

D. PREPARATION AND SUPERVISION

Through the required period of supervision, the caseworker must help the foster parents to fully understand the permanent legal commitment of adopting a child and the change in the roles from foster parents to adoptive parents. They should be linked to the same support systems as other prospective adoptive parents to deal with any concerns they may have. [18 NYCRR 421.8(h)(2)]

The following topics should also be discussed with the foster parents during the period of preparation and supervision to help them fully prepare to become adoptive parents:

- the child's comprehensive health history
- whether there will be post-adoption contacts between birth parent and child
- adoption subsidy and nonrecurring adoption expenses reimbursement application procedures, including annual verification of the child's dependency and educational status
- adoption tax credit and other tax benefits for foster parents

- the importance of retaining an adoption attorney
- gathering documents related to the adoption early to help the process move more quickly
- ICAMA procedures to support adoptive families moving out of state
- adoptee information registry

E. SUBSIDY INFORMATION

1. Providing Information About Subsidy

The caseworker responsible for an adoption placement must provide information to foster parents interested in adopting about the adoption subsidy program at the time they are told a proceeding to free the child for adoption has begun. This includes explaining the criteria used to determine whether a particular child is hard to place or handicapped.

Before placing a child in an adoptive home, or approving a foster parent as an adoptive parent, the caseworker must document whether the foster parent with whom the child is living will adopt the child with or without an adoption subsidy.

The caseworker must also document his or her assessment as to whether or not the child may be currently eligible for an adoption subsidy. When the foster parents are approved or in the process of being approved to adopt their foster child, the adoption subsidy application should be completed and submitted for approval as soon as possible. If the application is complete and the documentation supports the child's eligibility for subsidy, the application will be approved contingent on the child being freed for adoption. (*See Chapter 12 for more information on adoption subsidy.*)
[18 NYCRR 421.24(b)(1)]

2. Children Not Eligible for Subsidy

If a child does not appear to be eligible for the adoption subsidy and the foster parent indicates an inability or unwillingness to adopt the child without subsidy, the agency must seek an alternative adoptive placement for the child. The caseworker must document any efforts to locate adoptive parent(s) willing to accept the adoptive placement of the child without payment of an adoption subsidy. [18 NYCRR 421.24 (b) (1)(ii)]

F. PREPARATION OF THE FOSTER FAMILY FOR REMOVAL OF THE CHILD

In the event that foster parents are unable or unwilling to adopt the child, their cooperation is needed to prepare the child to move to an adoptive home. The importance of their love and care for the child should be acknowledged even though they cannot make the commitment to adopt. Their role can be critical in enabling the child to feel secure enough to leave the home.

For children who have been in the foster home for over one year, or even less in

some cases, the emotional bond with, and dependence on, the foster parents may be strong. Usually these children have established a meaningful relationship with the foster parents. Foster parents should be encouraged to continue to have contact with the child when it is desired by the adoptive parent(s) and the child, and is in the child's best interests. When there is a strong relationship between the current foster parents who are not adopting, adoptive parents should be sought who will allow ongoing contact between the foster parents and child if it is in the child's best interests. While the agency is required to give written notice only 10 days prior to removal of a child from a foster home, enough time should be given to prepare the child and the foster parent emotionally, except when the health and or safety of the child is at risk.

It is extremely important for the agency to respond not only to the emotional needs of the child being removed, but also to the emotional needs of the foster family, including other children in the home, when faced with removal of the child. Working through the emotional release of the child from the foster parent and actively involving the foster parent in planning for the child can often help make the process go more smoothly for everyone. In some cases, the foster parents and the child may be counseled by the same caseworker. In cases when the foster parents are angry at the caseworker who did the placement, it may be desirable for another caseworker to work with the family on the separation. [SSL 400; 18 NYCRR 421.19(g) and 18 NYCRR 443.5]

G. DOCUMENTATION

Progress Notes

The following information related to foster parents who wish to adopt should be included in the case record:

- Summary and dates of casework contacts with foster parents
- The agency's plan for the child
- The foster parents' role in the plan
- Subsidy issues and finalization issues
- Contacts or consultation with significant others

The case record should specify actions to prepare the child for adoption including tasks for foster parents to complete with the child (e.g., working with life books). Such tasks are appropriate particularly when the child must be moved from the current foster parents' home to an adoptive placement.

Chapter Ten

Services to Adoptive Parents

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A. RECRUITMENT

Since the passage of the federal Adoption and Safe Families Act of 1997 (ASFA), there has been a sharp national increase in the number of children adopted from foster care. However, even with this increase, the number of children adopted nationally in 2001 represented less than half of the children waiting in foster care for adoption that year. Further, the vast majority of the post-ASFA adoptions were by foster parents or relatives of children in care; relatively few adoptions of children from foster care are with adoptive parents recruited from the general population.¹

The situation for New York State’s waiting children mirrors the national picture. As of December 31, 2008, there were 6,735 children in foster care in NYS with a permanency goal of adoption. Of those children, about half (51.8%) were not yet legally free, and 1,943 (28.8%) were legally free and in an adoptive placement with an adoption placement agreement signed, waiting for their adoption to be finalized. However, about one in five children (19.4%) with a goal of adoption were legally free and not in an adoptive placement.² Many of these are the children for whom intensified recruitment efforts are needed, as are the children in the process of being legally freed but for whom no adoptive resource has been identified.

¹ J.B. Wilson, J. Katz, & R. Green. (2005). *Listening to Parents: Overcoming Barriers to the Adoption of Children from Foster Care*. Harvard University: John F. Kennedy School of Government.

² NYS Office of Children & Family Services (2008). *Monitoring and Analysis Profiles With Selected Trend Data: 2004—2008*, p. 23.

1. Recruitment of Families

Social Services Law requires that adoption services be made available for each child who is freed for adoption. Adoption services include the recruitment and home study of prospective adoptive parents. Agencies must have a comprehensive recruitment plan that focuses on developing a pool of adoptive parents willing and able to adopt the children needing placement and representative of the children in care. In compliance with these mandates, OCFS regulations require the following.

Authorized agencies operating an adoption program must:

- carry out recruiting efforts specifically directed at communities or 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 require 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]

Recruitment of families for children must be an ongoing, year-round function for an agency to have a pool of approved adoptive families available for children who are legally free and waiting for adoption, as well as children who will soon be free for adoption. Agencies have a responsibility to achieve timely and appropriate placements of all waiting children in need of families.



Note: Outreach efforts to various groups should be made to publicize the agency's adoption program and to obtain the widest use of its services. Special attention should be given to the involvement of groups not represented or underrepresented in the pool of available prospective adoptive parents.

2. MEPA Requirements

The federal Multiethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, requires voluntary authorized agencies that receive federal funds and provide adoption services to actively recruit prospective adoptive parents. These parents should reflect the ethnic and racial diversity of the children in need of adoptive homes.

Major Provisions of MEPA

Among the major provisions of the MEPA are the following³:

- Prohibits state agencies and other entities that receive federal funding and are 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. **Note:** this includes local social service districts and voluntary authorized agencies with foster children in their care.
- Prohibits state agencies and other entities that receive federal funds and are involved in foster care or adoption placements from categorically denying any person the opportunity to become a foster or adoptive parent solely on the basis of race, color, or national origin of the parent or the child.
- Requires states to develop plans for the recruitment of foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom families are needed.
- Prohibits agencies from routinely considering race, color, or national origin in making placement decisions.
- Requires that any consideration of race, national origin, or ethnicity must be done on an individualized basis when special circumstances indicate that their consideration is warranted.
- Has no effect on the provisions of the Indian Child Welfare Act of 1978.
- Makes failure to comply with MEPA a violation of Title VI of the Civil Rights Act.

This means that states, local departments of social services, and voluntary agencies required to comply with MEPA cannot have a stated or unstated policy that requires race, color, or national origin to be a primary or routine condition or determining factor when deciding on the best foster or adoptive home for a child, or when accepting or rejecting an applicant interested in becoming a foster or adoptive parent.

Impermissible Activities under MEPA

Caseworkers and agencies must pay careful attention to MEPA requirements. Failure to comply with the provisions of MEPA could result in serious financial and other penalties for the caseworker, the agency, the state or any other entity that receives federal funds.

MEPA reflects the judgment of the U.S. Congress that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into

³ U.S. Department of Health and Human Services, Administration for Children & Families (2001). "Chapter 4: MEPA/IEAP," *Child Welfare Policy Manual*. Retrieved from http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp

qualified homes. In particular, it focuses on the possibility that policies designed to match children with families of the same race, culture or ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also intends to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families so that all children can be quickly placed in homes that meet their needs.

Federal law forbids decision-making based on race or ethnicity unless it advances a compelling government interest. Here, the only compelling government interest is to protect the best interests of the child. An adoption agency may take race or ethnicity into account only if it has made an individualized determination that it is necessary, based on the facts and circumstances of the specific case and to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny by the courts to determine whether it satisfies the tests noted above.

Statutes or policies violate MEPA or Title VI of the Civil Rights Act of 1964 if they:

- 1) establish time periods during which only a same race/ethnicity search will occur;
- 2) establish orders of placement preferences based on race, culture, or ethnicity;
- 3) require caseworkers to specially justify transracial placements; or
- 4) otherwise have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

Other rules, policies or practices that do not meet the constitutional strict scrutiny test noted above would also be illegal.⁴

Race, color, and national origin may not routinely be considered in assessing the capacity of particular prospective foster or adoptive parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster or adoptive parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.⁵

An essential component of the recruiting process is having staff present in the community from which the agency wants to recruit. Orientation meetings should be conducted in meeting space available in churches, community centers, community organizations, or national organizations. Use of the media (radio, television, newspapers, and magazines) should be made continually, but the recruitment process goes beyond advertising in the media. Whenever the interest in adoption is found, be it church groups, unions, or work sites, agency staff should be available to speak and offer information about the program, including the need for homes and the availability of subsidy. Recruitment, especially in rural areas, involves tapping into the natural helping systems. Adoptive parents are frequently a resource in locating other adoptive parents. Having parents who have adopted successfully become a part of the agency's recruiting efforts can facilitate this process. [18 NYCRR 421.16(j) and 421.18(d)(2)]

⁴ Ibid., Section 4.3, Question #1.

⁵ Ibid., Section 4.3, Question #4.



RESOURCES

For more information about MEPA, see:

- *Multiethnic Placement Act of 1994*, issued by OFCS as an Administrative Directive in 1996 (96-ADM-02) and available at <http://ocfs.state.ny.us/main/policies/external/1996/>
- *Chapter 4: MEPA/IEAP of the federal Child Welfare Policy Manual*. This publication is available at http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp

3. Prospective Parents for “Legal Risk” Placements

Prospective adoptive parents should also be considered as a resource for legal risk or “at risk” placements. Such placements involve children who are not likely to return home but are not yet legally freed for adoption, although the agency is making efforts to terminate parental rights. Adoptive applicants cannot be denied or dismissed because they do not want to consider an “at risk” placement. (*See Chapter 9 for detailed information on legal risk placements.*)

B. BARRIERS TO RECRUITMENT

A study conducted by researchers at Harvard University, the Evan B. Donaldson Adoption Institute, and the Urban Institute explored the question of why, despite an increasing demand for children to adopt and active adoptive family recruitment efforts, few “general applicants” (those who were not the children’s relatives or foster parents) adopt children from foster care. Among the major findings of the study were the following⁶:

- There is a steep attrition rate as prospective families go from initial call to adoption. It appears that only about one in 28 people who contact a child welfare agency adopts a child from foster care.
- Word-of-mouth is more important than media for finding potential adoptive parents.
- The first call made to ask for information can be an intensely emotional experience for the prospective adoptive parent.
- By and large, agencies do not handle the first call well. Many prospective parents found it hard to get a worker to answer their call, getting lost in voice mail, being transferred from one person to another, and leaving messages that were never returned. Second, many who did speak with someone were frustrated by the tone and content of their initial contact and, while knowing little about the adoption process and seeking general information, ran into a system that seemed designed to weed out those who weren’t interested in hard-to-place children.

⁶ J. B. Wilson, J. Katz, & R. Green. (2005). *Listening to Parents: Overcoming Barriers to the Adoption of Children from Foster Care*. John F. Kennedy School of Government, Harvard University.



Note: The study recommended that the first person to speak with prospective parents be a professional staff member with a background in counseling and specialized training in adoption. Agencies with a specialized adoption hotline where a well-trained and friendly person assures callers of a direct and immediate response are more successful in their recruitment efforts. Families need to be provided with a clear, written road map of the adoption process at the outset.

- Agencies struggle with two conflicting responsibilities: recruiting as many prospective adoptive parents as possible and screening out those who cannot, or should not, adopt.



Note: Recommendations from the study include that in the beginning stages of the adoption process, emphasis should be on recruitment, with clear information and guidelines provided to prospective parents. When possible, agencies should separate the screening and training functions.

- A strong personal connection between the prospective adoptive parent and someone at the agency can make all the difference.
- By and large, people adopting from foster care find the training they received to be helpful.
- Potential adoptive parents struggle with how open to be during the training and home study process.

Additional recommendations from the study include, but are not limited to:

- Provide prospective parents with clear information about the matching process and involve them in the process.
- Buddy System: Agencies should make more use of families that have previously adopted as “buddies” for prospective adoptive parents to do some of the “hand holding” that prospective parents need but agencies are too resource-strapped to provide.
- Listen to prospective adoptive parents and respond to their needs and concerns. Agencies should have a process for soliciting and incorporating feedback from parents, including surveys, focus groups, or parent advisory boards.

C. RESPONSE TO ADOPTIVE APPLICANTS

1. Inquiries

Agencies operating an adoption program are required to have a designated adoption or home finding unit that can handle inquiries from the public about adoption. That unit is responsible for receiving all adoption inquiries coming into the agency.

A response to an adoption inquiry must be made within five business days of receiving the inquiry, and an invitation must be offered to either an individual or a group

meeting (which could be held in conjunction with a foster parent orientation meeting) to take place within 30 days of receiving the inquiry. A prompt and personal face-to-face contact with an agency caseworker can help reduce the number of families that initially show interest but withdraw between the initial inquiry and the initial orientation session. Among the reasons for this withdrawal of interest may be a feeling of vulnerability, and even fear, that they will not be accepted as adoptive parents for one reason or another. [18 NYCRR 421.11 (a) & (b)]

2. Orientation Sessions

Orientation sessions must be held at convenient hours for those invited and should include evening and/or weekend sessions. In each session, the characteristics of the children available for adoption should be discussed, and The Adoption Album must be shown and explained. The Adoption Album will provide families with information on the kind of children available and may expand a family's interest in adopting a child, or a sibling group, from age groups or with special needs other than those originally desired. The OCFS adoption website should also be described and the Internet address provided: <http://www.ocfs.state.ny.us/adopt/>. [18 NYCRR 421.11 (c) & (d)]

The procedures for applying to adopt, the adoption study process and the availability of adoption subsidies and a federal adoption tax credit (*see section J on page 10-40*) must be discussed. One goal of the orientation sessions is to provide sufficient information about adoption subsidies, including the OCFS Adoption Subsidy booklet (OCFS Publication 1130), and to reassure prospective parents that income is not a barrier to adopting (*see Chapter 12 on Adoption Subsidy*). The OCFS form "Application to Adopt" (LDSS 0857) must be offered to participants at the conclusion of each session. Part I of this form is the information the caseworker will enter into the Family Adoption Registry for prospective adoptive parents who express a willingness to adopt handicapped or hard-to-place children. Part II of the form is Family Certification Information and Part III is General Family Information. This form is available on the OCFS website at www.ocfs.state.ny.us/main/forms/adoption/.

Participants must be informed of the requirements for adoption and the adoption study, including but not limited to the following:

- married persons must adopt as a couple, unless they are separated with a legally recognizable separation agreement or decree of separation, or have been living separate and apart for three or more years;
- the agency will inquire of the OCFS whether the applicant or any other person over the age of 18 who lives in the home of the applicant is the subject of an indicated child abuse and maltreatment report in New York State. If the applicant or any other person over the age of 18 resided in another state within the past five years, the agency will request child abuse and maltreatment information from that other state.

- the agency must conduct a national (FBI) and New York State criminal background check by taking the fingerprints of each applicant and any other persons over the age of 18 residing in the home.⁷
- each applicant will be required to submit a sworn statement indicating whether such applicant or any other person over the age of 18 currently residing in the home, to the best of the applicant's knowledge, has ever been convicted of a crime in New York or any other jurisdiction;
- an applicant may apply for a fair hearing if an application is not acted upon within six months of the completion of the home study or if the application is disapproved. [18 NYCRR 421.11(g)]

At the orientation session, caseworkers may want to discuss the documentation that will be required from applicants during the application process, although this is not required until the first meeting with the applicant as part of the home study process. Key pieces to highlight include a report from a physician about the health of each household member and three references, one of which can be a relative of the applicant (*see Section D*).

Within five days of an orientation session, an agency must contact persons who have inquired about adoption and have been invited to an orientation session but did not attend. Such persons should be invited to another orientation session or, if they are unable to attend a scheduled orientation session, be offered an individual orientation session.

A record must be developed for each person inquiring about adoption and should contain:

- the date the inquiry was received and by what means;
- a dated copy of the invitation sent to the orientation session;
- a dated copy of the written acknowledgement of the inquiry;
- a dated record of all further communication with the individual or couple.

The record must be kept for 12 months after the last communication, if the individual or couple does not complete an application. [18 NYCRR 421.11(i) & (j)]

⁷ For more information, see the following OCFS Administrative Directives at the links listed:

- Live Scan Technology for Fingerprinting Foster and Adoptive Applicants (09 OCFS-ADM-18)
Link: http://www.ocfs.state.ny.us/main/policies/external/ocfs_2009/adms/09-ocfs-adm-18_live_scan_technology_for_fingerprinting_foster_and_adoptive_applicants.pdf
- State and National Criminal History Record Checks (for Foster/Adoptive Parents) (07-OCFS-ADM-01) Link: [http://www.ocfs.state.ny.us/main/policies/external/ocfs_2007/adms/07-ocfs-adm-01%20state%20and%20national%20criminal%20history%20record%20checks%20\(for%20foster-adoptive%20parents\).pdf](http://www.ocfs.state.ny.us/main/policies/external/ocfs_2007/adms/07-ocfs-adm-01%20state%20and%20national%20criminal%20history%20record%20checks%20(for%20foster-adoptive%20parents).pdf)
- Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents) 08-OCFS-ADM-06. Link: [http://www.ocfs.state.ny.us/main/policies/external/ocfs_2008/adms/08-ocfs-adm-06%20criminal%20history%20record%20checks%20and%20mandatory%20disqualifying%20crime%20\(for%20foster%20and%20adoptive%20parents\).pdf](http://www.ocfs.state.ny.us/main/policies/external/ocfs_2008/adms/08-ocfs-adm-06%20criminal%20history%20record%20checks%20and%20mandatory%20disqualifying%20crime%20(for%20foster%20and%20adoptive%20parents).pdf)

3. Application To Adopt

LDSS Form 857 is the adoption application form approved by OCFS. If an agency chooses to use an alternative application, the application must be approved by OCFS. The LDSS Form 857 requires that applicants fill out their demographic information and indicate whether they are currently a certified or licensed foster parent and with which agency. For foster parents planning to adopt a child placed in their home, the child's name, date of birth, and the date of placement in the home should be noted. Non-foster parents or foster parents planning to adopt a child not in their home are asked to indicate the characteristics of the child(ren) sought (i.e., age, race, sex, type of handicap, or sibling group size). [18 NYCRR 421.12(a)]

A record must be developed for each person completing an application. The record must include, but is not limited to:

- A record of the applicant's inquiry
- The application, medical report, and references
- Summaries of interviews with the applicant(s) and of visit(s) to applicant(s)' home
- A summary of conferences which sets forth the basis for each decision that affects the applicant(s)' status with the agency
- Copies of all correspondence with the applicant(s)
- Response from the New York Statewide Central Register (SCR) and other states' central register, if applicable
- Response from the Criminal History Record background check
- The sworn statement on criminal conviction record [18 NYCRR 421.12(b)]

Entries in the record should be dated, with the dates of events documented for use in future compliance reviews or in fair hearings. If the applicant(s) are applying to adopt a handicapped or hard-to-place child, information from the application must be entered by the caseworker/agency into the Family Adoption Registry upon submission of the application (*see Section H*).

4. Prioritizing Applications

For a number of years, the adoptive parent applicant pool in New York State has consisted of many more applicants for relatively healthy, young children than there are available. Far fewer applicants are interested in adopting older children, children with handicaps, or sibling groups. From time to time, agencies have closed intake to the first kind of applicants. More often, these applicants have been studied and approved but have not had children placed with them. Both situations often have resulted in frustrated applicants who find it difficult to understand and accept the outcome. It has also meant spending limited staff time studying families for whom no children were waiting. The result has been less time for agency staff to recruit and work with families who might be resources for the waiting children.

OCFS regulations have established priority groups based on the children awaiting adoption, making it easier for agencies to use limited staff time to recruit and develop families who would be resources for these children. It also makes it easier for agencies to explain, and for families to accept, the delay in an adoption home study if the child they seek is not in a priority group. Applications must be prioritized for adoption studies according to the type of child desired, as follows:

First Priority for adoption study is given to:

- persons seeking to adopt children having the characteristics of the largest proportion of waiting children as determined by OCFS;
- foster parents seeking to adopt a child who has lived in their home for 12 continuous months; and
- Native American applicants seeking to adopt Native American children.

Such applicants must be informed, in writing, that their applications will be accepted for immediate study. They must be provided with a date for the first appointment with the agency, to be held not more than 30 days from receiving the completed application. Each study must be completed within six months of receiving the application. The applicant must be given the name and telephone number of an agency staff person who can be contacted while waiting for the study to begin. [18 NYCRR 421.13(a)(1) & (b)(1) and 421.14(b)(1)]

Second Priority is given to:

- applicants seeking to adopt children photolisted in *The Adoption Album* who do not have the characteristics of the largest proportion of waiting children, as determined by OCFS; and
- applicants seeking to adopt children who are currently available for adoption, in the care of the agency, and for whom there is not a waiting list of approved families.

Applicants must be given an estimate for when a study may begin and the name and telephone number of an agency staff person who can be contacted while waiting for the study to begin. The study must be completed within six months of receiving the application. [18 NYCRR 421.13(a)(2) & (b)(2) and 421.14(b)(2)]

Third (and last) Priority is given to all other applicants, including those expressing an interest in adopting children such as healthy young children who are not photolisted, if such children are not immediately available for adoption in the care of the agency where the application was made.

Third priority applicants should be informed if there is any likelihood that an adoption study will be granted. Unless the agency is able to initiate the study promptly and complete it within six months of receiving the application, such applicants must be rejected on the basis of “no need.” Notice to the applicants of the rejection based on “no need” must include:

- a statement of the fair hearing rights which are set forth in sections 22 and 372-e of the Social Services Law; and

- a statement that the applicant has the option of remaining on a waiting list with a description of the procedures for exercising this option. [18 NYCRR 421.13(a)(3), (b)(3)]

Agencies are required to contact applicants on the third priority waiting list at least once a year, invite them to a meeting to discuss the characteristics of waiting children and ascertain whether the applicants have continued interest in remaining on the waiting list. [18 NYCRR 421.14(c)]

5. Referrals to Other Agencies

An applicant may be referred to another agency before the adoption study begins when:

- the applicant(s) has expressed interest in a specific photolisted child determined to be in the care of that other agency; and
- the applicant indicates a willingness to be referred.

If the applicant does not accept a referral, completion of the adoption study cannot be delayed beyond the time periods specified in OCFS regulation 18 NYCRR 421.14. In some cases, when the referral would create an inconvenience for the applicant due to the distance of the agency caring for the child, the referral to the other agency should not be suggested, as it will be perceived as a rejection and may result in the applicant's premature withdrawal. Further, the applicant(s) could become a resource for children other than the specific child desired. [18 NYCRR 421.13(d)]

6. Waiting Lists

Separate waiting lists of first, second, and third priority applicants must be maintained. Each waiting list must contain the name of each applicant, the date of receiving the completed application by the agency, and the characteristics of the child the applicant seeks to adopt. [18 NYCRR 421.14(a) & (b)]

To make the best use of limited agency resources for completion of studies, first priority applicants must be given priority at the start of their studies, the assignment of agency staff, the scheduling of individual and group appointments, and conferences to review their studies and decide whether to approve the family to adopt. [18 NYCRR 421.14(b)(1) and (3)]

Second priority applicants do not have to be served in the order of when their application was received. They can be grouped according to similar interests or according to the characteristics of specific waiting children or characteristics representative of the needs and resources of the community being served. However, the study must be completed within six months of receiving the completed application. [18 NYCRR 421.14(b)(2)]

D. ADOPTION STUDY

1. Study Process

Agencies must conduct an adoption study process, either in groups, individually, or a combination of both. Group study offers many advantages for the agency and applicants. The agency gains an understanding of the applicant from watching him or her interact with

others in the group, which can add greatly to the information gained during interviews. Further, groups have the opportunity to develop into a mutual family support group, continuing to meet and support one another during the pre-placement and post-placement periods, which becomes immensely valuable after the adoption is finalized.

The regulations require that study processes containing two or more group sessions must include the participation of parents who have already adopted a child. Applicants can be introduced to, and interact with, adoptive parents, and this can add a significant dimension to preparation for adoption. [18 NYCRR 421.15(a) & (b)]

At the first appointment or meeting, applicants must be informed that the following will be required before the conclusion of the study:

- Report from a physician about the health of each member of the household
- References from three persons, at least two of whom cannot be related to the applicant(s)
- If married, proof of marriage
- If married and living separate and apart from his or her spouse, proof that the separation is based upon a legally recognizable separation agreement or decree of separation
- If married and living separately from his or her spouse, an affidavit attesting that he or she has been or will be living separate and apart from the spouse for a period of three years or more before the start of the adoption proceeding
- If previously married, proof of dissolution of marriage by death or divorce
- Evidence of employment and salary for each employed applicant (e.g., W-2 form or wage stub)
- A response from OCFS to an inquiry about any indicated child abuse or maltreatment report within New York State and, if applicable, a response from an out-of-state central register
- A response from OCFS to the FBI and New York State criminal history record checks of the applicant and any other person over the age of 18 currently living in the home of such applicant
- A sworn statement from each applicant, indicating whether, to the best of such applicant's knowledge, such applicant or any person over the age of 18 currently living in the home has ever been convicted of a crime in New York State or any other jurisdiction [18 NYCRR 421.15]

The study process should help to establish a positive relationship with adoptive applicants that will enable them to continue to accept help, both during the selection and placement of the child and the post-placement period. Most agencies use the Group Preparation and Selection II/ Model Approach to Partnerships in Parenting (GPSII/MAPP) approach to the orientation, training, and mutual selection process with

foster and adoptive parent applicants. There is also an OCFS curriculum for caseworkers working individually with applicants called Deciding Together.

GPSII/MAPP training generally consists of 10 three-hour sessions and at least one visit by the caseworker to the applicant's home. Trainers must have received training, usually through a series of train-the-trainer sessions, in the delivery of GPSII/MAPP. In addition to providing basic information about being a foster or adoptive parent of children with special needs, the purposes of this approach are:

- to prepare parents for the challenges of parenting special needs children;
- to provide a structure for informed decision making;
- to help parents make the decision about their capacity to foster and/or adopt special needs children; and
- to create a partnership between the parent and the agency, enabling the caseworker to learn more about the participants through this interactive training method.

By the end of the training, applicants decide whether foster parenting and/or adoption are the right fit for them at this time in their lives, and the agency makes a similar decision about the applicants. The goal is to do this in partnership through discussions both in the group setting and in individual meetings with the caseworker. The training encourages applicants to consider becoming certified/approved as both foster and adoptive parents, so they can provide both the short-term foster placement for a child and be ready as an adoptive resource if the child is unable to return home. However, applicants can choose to become solely a foster parent or solely an adoptive parent and need to be supported by their caseworker with either decision. Given the number of children who are legally free but not in an adoptive placement in New York State or across the country, applicants who clearly wish to become adoptive parents are a valuable resource, even if there is not a child immediately available in the county where the training is taking place.

Insofar as possible, applicants should be helped to decide for themselves whether adoption is suitable for them, as they come to understand the challenges inherent in being an adoptive parent and the needs of children available for adoption. If the caseworker respects the prospective adoptive parents' capacity and ability to decide whether adoption is the best course for their family, the applicants are more likely to be open about their doubts, uncertainties, and conflicts. Further, should the prospective parents decide to adopt, they are likely to be more willing to ask for and accept help in the post-placement period. [18NYCRR 421.15(a-b)]

The regulations require that agencies with adoption programs explore each applicant's ability to be an adoptive parent and discuss the following topics with the applicant:

- characteristics and needs of children available for adoption;
- the principles and requirements for adopting a child who is a member of a sibling group;

- principles related to the development of children;
- reasons a person seeks to become an adoptive parent;
- the understanding of the adoptive parent role;
- the person's concerns and questions about adoption;
- the person's psychological readiness to assume responsibility for a child;
- the attitudes that each person in the applicant's home has about adoption and their concept of an adopted child's role in the family;
- the awareness of the impact that adoptive responsibilities have upon family life, relationships, and current life style;
- a person's self-assessment of his/her capacity to provide a child with a stable and meaningful relationship; and
- the role of the agency in supervising and supporting the adoptive placement.

[18 NYCRR 421.15(d)]

2. Study Criteria

It is recognized that neither children nor families are perfect and that families should be looked at in terms of whether or not they can be an appropriate resource for a waiting child. Families who may have experienced alcoholism, crime, bankruptcy, or emotional problems in the past may nonetheless have resolved their problems and now have the necessary ability to integrate a child into their family, providing safety and permanency for him or her. In some cases, a family who has overcome personal challenges may be stronger and have experiences that may actually improve their ability to parent a child who has experienced similar issues. Thus, each family must be looked at individually, and any negative factors should be carefully evaluated as to their severity, current relevance, and likelihood of affecting family functioning. However, caseworkers must be alert to potential danger signs and explore these before approving the family for adoption or placing a child in the applicant's home. The safety of the child is always the paramount concern.

General Requirements

Agencies must explore the following characteristics of adoptive applicants:

- Capacity to give and receive affection
- Ability to provide for a child's physical and emotional needs
- Ability to accept the 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, frustrations, and the ability to accept a child with limitations

- Feelings about parenting an adopted child and the ability to make a commitment to a child placed in the home
- Ability to work with the agency and use community resources to strengthen and enrich family functioning

At a minimum, these are the characteristics needed to successfully adopt a child. The written home study summary should indicate what was discussed and done in order to assess these characteristics, and on what basis they were determined to be absent or present. [18 NYCRR 421.16(a)]

Age

Agencies must accept for study an application to adopt from any person 18 years old or older and must determine the personal readiness of each person applying to adopt through the adoption study process. Agencies cannot establish their own minimum and maximum age standards for study or acceptance of adoptive applicants. [18 NYCRR 421.16(b)]

Health

Approved applicants must be in such physical condition that it is reasonable to expect the applicant to live to the child's majority (usually considered age 18) and have the energy and other abilities needed to fulfill their parental responsibilities.

The applicant must provide the agency with a report of a physical examination conducted not more than one year before the date of his or her application to adopt and a written statement from a physician, physician assistant, nurse practitioner, or other licensed and qualified health care practitioner, as appropriate, regarding the family's general health, the absence of communicable disease, infection, or illness, or any physical condition(s) which might affect the proper care of an adopted child. This examination must include a tuberculosis screening and additional related tests as deemed necessary within the last 12 months. An additional report of chest X-rays is required when a physician determines that such X-rays are necessary to rule out the presence of current diseases. If the adoptive applicant is or has been a foster parent, and the agency that certified, licensed, or approved the foster parent has a completed medical report on the foster family in its records, the foster family medical report will satisfy this requirement if the medical report was completed within the past year. The report must include a written statement on the general health of all of the family members living in the home. [18 NYCRR 421.16(c)(1) & (2)]

When an agency finds that the applicant has a physical condition that would negatively affect the applicant's ability to carry out his or her current or long-term parental role, the adoption study may be discontinued with the agreement of the applicant. If the applicant does not agree with the assessment of negative effects, the applicant must be given the opportunity to seek another medical opinion and submit another medical report before a final decision is made. In the case of an applicant whose study is discontinued or results in rejection because of current or long-term expected effects of a medical condition, the applicant's record must state the condition found and the effects it has caused or is likely to cause [18 NYCRR 421.16(c)(3) & (4)]. Physical

medical conditions that can be corrected or healed need not end in withdrawal or disapproval.

Marital Status

There may be no discrimination in placement on the basis of marital status. Married and single men and women have adopted hard-to-place and handicapped children successfully. It is important to recognize that all types of families are potential resources for waiting children and should be considered as potential adoptive parents. Maturity, self-sufficiency, ability to parent, and availability of support systems are the critical assessments in identifying parents' appropriateness for specific children.

New York State's Domestic Relations Law, Section 110, defines the following criteria regarding the marital status of persons who may adopt in New York State:

- An adult unmarried person;
- An adult married couple together;
- Any two unmarried adult intimate partners together;
- An adult married person living separate and apart from his or her spouse pursuant to a separation decree, judgment, or agreement; or
- An adult married person who has been living separate and apart from his or her spouse for at least three years prior to starting an adoption proceeding.

Also, but not often relevant to adoptions of children from foster care, an adult or minor married couple together may adopt a child of either of them born in or out of wedlock.

Chapter 509 of the Laws of 2010 amended New York's Domestic Relations Law, Section 110, to codify previous decisions by the Court of Appeals of the State of New York that two adults living together, but not married, may adopt a child together and that the two adults may be of either the same or different gender.⁸ This Chapter amended Section 110 of the Domestic Relations Law to authorize that two unmarried adult intimate partners may adopt a child together. To determine whether an intimate relationship exists, the factors an authorized agency should consider include, but are not limited to: the nature or type of the relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts should be considered to be an intimate relationship.

Agencies must not consider marital status in their acceptance or rejection of applicants. However, married persons must both consent to the adoption unless one partner is living separately and apart from his or her spouse with a legally recognizable separation agreement or decree of separation, or the couple has lived separately for three or more years before the start of the adoption proceeding. Agencies must not establish policies that put single or divorced applicants, applicants who are separated from their spouse, or widowed applicants at a disadvantage. [DRL110; 18 NYCRR 421.16(d)]

⁸ *Matter of e Jacob, Matter of Dana*, 86 N.Y.2d 651, 636 N.Y.S.2d 716, 660 N.E.2d 397 (1995).

Same-Sex Marriages

Same-sex marriages solemnized in New York State became legally recognized as of July 24, 2011, following the enactment of the Marriage Equality Act (Chapter 95 of the Laws of 2011).

In addition, a decision of the New York State Supreme Court, Appellate Division,⁹ on February 1, 2008 held that same-sex marriages legally performed in other jurisdictions are “entitled to recognition in New York in the absence of express legislation to the contrary.” This court decision is consistent with other state court decisions. There are numerous statutory and regulatory provisions related to adoption that refer to a person’s marital status and use gender-specific words for parents and spouses. These provisions must be interpreted to recognize same-sex marriages and both spouses in the same-sex marriage when the same-sex marriage was legally performed in another country or state.

As their local forms are updated, local social services districts and agencies should revise the language to replace gender-specific terms (such as “mother” and “father” or “husband” and “wife”) to gender-neutral terms (such as “parent” or “spouse”) in recognition of same-sex persons who are legally married.



RESOURCES

For more information about adoption, marital status, and same-sex marriages, see:

- *Recognition of Legal Same-Sex Marriages*, issued as an Administrative Directive in 2009 (09-OCFS-ADM-07) and available at http://ocfs.state.ny.us/main/policies/external/OCFS_2009/
- *Adoption by Two Unmarried Adult Intimate Partners*, issued as an Informational Letter in 2011 (11-OCFS-INF-01) and available at <http://ocfs.state.nyenet/policies/external/>
- *Clarification of Adoption Study Criteria Related to Length of Marriage and Sexual Orientation*, issued as an Informational Letter in 2011 (11-OCFS-INF-05) and available at <http://ocfs.state.ny.us/main/policies/external/>

Separated Spouses

In the case of separated foster parents applying to adopt, it is important during the home study to assess the reasons for the separation and the likelihood of reconciliation. This is especially important when a child has lived in a foster home for 12 months or more, or has emotionally bonded with the foster parent(s). In cases where reconciliation is imminent, expected, planned, or sought by a spouse, it may be advisable to delay making an adoptive placement until the marital relationship stabilizes. Further, the impact

⁹ Appellate Division, Fourth Department, *Martinez v. County of Monroe* 50 A.D.3d 189.

of reconciliation on a child before or after finalization of the adoption should be discussed with separated persons who are interested in adopting. The prospective adoptive parent should be fully aware of the possible effect reconciliation could have on adopted children and should be able to prepare a child for such a possibility. The caseworker should also assess the relationship the child has with the spouse to assess the importance of sustaining that relationship.

Single Applicants

There is often concern that the single parent may not have sufficient social, emotional, or family support; exploration of such resources is a necessary part of all adoption studies, as parents need access to help and support from time to time. The application cannot be denied for approval solely on the basis that the applicant is single. It is appropriate to explore for all applicants, whether they are married or not, what assistance the parent will have available on a daily basis (e.g., child care during working hours) and in times of stress, including help from relatives.

Length of Marriage

Adoptive applicants cannot be rejected for a study, or during the study, based on the length of their marriage. The agency may take the length of the marriage, or the length of the relationship as a whole, into consideration as one of the factors when evaluating applicants, but the agency cannot deny an applicant solely on the basis that the length of marriage is less than one year. When the adoptive applicants have been recently married (e.g., for less than one year), the agency may examine the impact of marriage on the applicants' ability to address issues such as stress, flexibility, coping with change, coping with problems, and the impact of the introduction of a child into a new family relationship.

Agencies also should take into consideration whether the adoptive applicants have resided together for a period of time before marriage, particularly when the adoptive applicants have been functioning as foster parents together. The agency may not deny an application solely because the applicants have been married for less than one year. During the study, the agency may want to examine the commitment and stability of the applicants' relationship and their ability to plan and commit to an adoptive child.
[18 NYCRR 421.16(e)]

Fertility

Adoptive applicants cannot be rejected on the basis of their fertility status. The significance of fertility and infertility as it relates to the desire to adopt must be explored during the adoption study, but applicants are not required to provide proof of infertility.
[18 NYCRR 421.16(f)]

Family Composition

Agencies may study family size as it relates to the ability of a family to care for another child and the quality of life that will be offered to an adoptive child. Policies cannot be established that require rejection of an applicant based on family composition without an assessment to determine its effect on the ability to care for a child and the quality of life that will be offered.

Routine preference cannot be extended to childless families, but rather the study must determine the effect that children in the home will have on the ability of the parent(s) to care for another child and the willingness of the children in the home to welcome or accept another child [18 NYCRR 421.16(g)(1)]. The caseworker should also consider the impact the addition of another child or children into the home would have on the children already in the home, taking into account any special needs of children already in the home.

Presence or absence of children in an applicant's home, regardless of age and sex, cannot be a basis for rejecting applicants. Each situation must be evaluated to determine the parents' ability to successfully care for the particular number of children in the family. However, an adoptive placement that will result in more than two infants under the age of two being in the home at the same time can be made only after a study indicates the family's ability to care successfully for the infants. [18 NYCRR 421.16(g)(2) & (3)]

Foster Children in the Home

If there are foster children in the home, placement of an adoptive child must be delayed if it would result in a family composition that violates Section 378(4) of the Social Services Law. This law states that no more than six children can be placed or cared for in a foster home. These six children may include foster children of any age and non-foster children under the age of 13. There is an exception that allows for two additional children in the home if they are siblings of each other, or siblings of a child living in the home, or are freed and being placed for adoption in the home. There are two other exceptions to this law. One would allow for a child who is being returned to foster care, or being returned to a foster home from a foster care residential/group placement, to be placed with his or her last foster parent even if six children are already in the home. The other exception is for the placement of a minor who is in foster care and the minor's child. [SSL §398.6(n) and 18 NYCRR 443.1(j)]



Note: If all foster children in a home are being adopted in that home, the agency could consider the home as an approved adoptive home and not a foster home, in which case the requirements stated above would not apply. In such a case, the home would cease receiving foster boarding home payments. However, if eligible, adoption subsidy payments could be made prior to the completion of the adoption. [SSL §§378 & 398; 18 NYCRR 421.16(g)(4) and 421.24(c)(2)(ii)]

Many children have needs that require intensive parenting during the early period of the adoption. For this reason, one adoption must usually be completed before starting another. An adoptive placement cannot be made in a home where a child was previously placed for adoption, but has not yet been adopted, except when:

- the child to be placed is a sibling of one already in the home;
- the delay in adoption is due primarily to court delays; or

- the child to be placed is unusually hard to place and other placement resources are not available.

Exceptions to placing another child for adoption before the finalization of a child already in the home must be documented in the adoptive child's case record and the family's case record. [18 NYCRR 421.16(g)(5)]

A parent's belief that he or she can serve as a resource for an additional child should always be evaluated without preconceptions. The ability to parent a large number of children varies greatly among families and also varies according to the characteristics of the children involved. Families with one or both parents or another adult remaining at home can sometimes care for more children than families with all adults working outside the home, and a number of school age children may be more easily cared for than an equal number of toddlers.

The decision must be based on the functioning of the family; indicators of the care provided to the children placed in the home; and the parents' ability to individualize children, serve their physical and emotional needs, and structure family life so that the parents' needs can also be met.

Gender Preference and Applicants' Sexual Orientation

Single applicants must not be rejected solely because they seek children of a specific gender. The needs of individual waiting children and the capacity of the prospective adoptive parent to meet those needs should be the primary considerations when making placement decisions.

Applicants cannot be rejected solely on the basis of homosexuality. A decision whether to approve an applicant for adoption must be made on the basis of individual factors explored in the adoption study process as they relate to the best interests of adoptive children. Any exploration of sexual preferences and practices of applicants must be carried out openly, with a clear explanation to the applicant of the basis for and relevance of the inquiry. [18 NYCRR 421.16(h)]

The intent of 18 NYCRR 421.16(h) is to prohibit discrimination based on sexual orientation in the adoption study assessment process. OCFS cannot contemplate any case where the issue of sexual orientation would be a legitimate basis, whether in whole or in part, to deny the application of a person to be an adoptive parent. The capacity of the prospective adoptive parents to meet the needs of children freed for adoption should be the primary consideration when making approval or rejection decisions of an adoption applicant.

Employment and Education of Parents

Employment, education, or volunteer activities of applicants may not be a basis for rejection. The essential question is not whether a parent works but the amount of quality time the parent(s) can provide for the child(ren). Excessively heavy career demands for travel, evening meetings, etc., should be carefully explored, as well as parental supports. For all families, rejection should be considered if the parent(s) are not able to coordinate their outside responsibilities to provide adequate time for the consistent parenting needed by all children. [18 NYCRR 421.16(i)]

Religion and Race

OCFS regulation, 18 NYCRR 421.16(j), states that “(r)ace, ethnic group, and religion shall not be a basis for rejecting an adoption applicant.” This means that an agency is prohibited from denying an individual’s application to become an adoptive parent because of race, ethnic origin, or religion.

Only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. (*See section A.2 of this chapter for information on MEPA.*)

One major exception to this legal standard involves the federal Indian Child Welfare Act (ICWA). Any foster care placement or adoptive placement involving a Native American child must be done in accordance with preferences for placement established by the ICWA. The provisions of MEPA do not apply to Native American children. (*See Chapter 11 for more information about ICWA.*)

Income

There is no specific level of income required of an applicant to adopt. However, an applicant is required to be able to provide at least the minimum standards of nutrition, health, shelter, clothing, and other essentials to the child. The adoption study process must evaluate an applicant’s ability to budget resources in such a way that a child placed in the home can be reasonably assured of at least these minimum standards. Applicants cannot be rejected on the basis of low income or because they are receiving Temporary Assistance (TA) grants. An applicant who needs skills in budgeting and money management must be referred to available resources that might help improve these skills.

It is crucial in selecting applicants that only those standards be used that relate directly to the ability of applicants to provide the child with what is essential—consistent, loving parenting in a safe environment. However, no child should be placed in a situation where sufficient nourishment, clothing, shelter, and medical care are unlikely to be available, nor into a home which is in such disrepair as to be dangerous to its inhabitants. A family living in circumstances that would endanger the child should be disapproved on the basis of them rather than on the basis of a dollar value or source of income.

A disapproval should be based on the refusal to accept needed financial management services or documented inability to benefit from them; residence in housing that would clearly endanger the health and safety of a child; or clear evidence that the applicant, even with the subsidy designed to help support the needs of the child, cannot maintain minimum nutrition, health, shelter, clothing, and other standards for a child placed in the applicant’s home. [18 NYCRR 421.16(k)]

Employment and Geographical Stability

Employment and geographical stability are variables that may or may not have a relationship to the ability to provide a loving, consistent family life for a child. There are many valid reasons for frequent changes in employment or residence. Changes in employment and residence may be examined to determine the significance of such changes for the functioning and well-being of the family and any child to be placed in the home.

Frequent changes in employment and residence should not be a basis for rejection unless it is determined that such changes reflect an inability to provide for the well-being of any child to be placed in the home.

Changes that seem to reflect an inability to hold a job are of concern and warrant further exploration, but even these do not, by themselves, justify disapproval. Many persons who have difficulty holding a job, particularly in economically depressed locations or times, may nonetheless be good parents. If the applicant is seriously emotionally depressed, highly irritable, or emotionally affected as a result of, or in conjunction with, his or her employment situation, he or she may not be a good candidate for the additional stress of parenting an adopted child.

Similarly, families move for a variety of reasons. If the applicant(s) move frequently, the reasons for this should be explored. Some families are required to move frequently for employment reasons, such as military transfers or upward career mobility. On the other hand, families who move frequently for other reasons and leave the rent unpaid show at least a pattern of money management difficulties that need to be addressed. Caseworkers should discuss with families the reasons for their frequent moves and whether the moves contribute to a sense of isolation or a lack of support that may be needed to successfully parent the child; it is likely that an adoption will add stress to the family system. [18 NYCRR 421.16(l)]

Child Care Experience

No applicant can be rejected solely on the basis of a lack of child care experience. The caseworker should ask about the applicant's experience with children and offer an opportunity to the applicant, if feasible and appropriate, to increase his or her experience, knowledge, and skills in this area. An exploration of the applicant's present knowledge about child care is appropriate. However, it is also important to keep in mind that experience in settings like schools, camps, or neighborhood organizations may not serve to prepare a person for the stresses of having children, particularly children with special needs, in his or her own home.

The caseworker should discuss with the applicant the types of trauma many children in foster care have experienced, including child abuse and neglect; the effects those experiences have on children; and the behaviors that result from those experiences. It should also be made clear that not all children in foster care have the same experiences or react in the same way to them, so there will be ongoing discussions about a specific child the family may wish to adopt once the home study is completed. The goal is to give applicants a fair and balanced view of children available for adoption from foster care so the caseworker can assess the applicant's experience with children with special needs and identify any need for additional training and support to help prepare the applicant for adoption.

If training is offered, it should include a significant teaching role by parents who have already adopted. Agencies using the GPSII/MAPP approach or similar approaches will be able to explore these issues through the training and home study process. This training and/or support should include a discussion of discipline and should lead to an understanding of the types of problems parents are likely to encounter and the experiences children may have had that lead to their current behavior. [18 NYCRR 421.16(m)]

Socialization and Community Support

The adoption study process must include an inquiry into the applicant's ability to locate and take advantage of human and organizational resources to strengthen their own capacity as parents. There must not be any requirement for particular levels of educational achievement or kinds of organizational involvement or community recognition. [18 NYCRR 421.16(n)]

Every person and every family needs support systems. Skills in interpersonal relations are important in enabling persons to use the various support systems that exist. The ability of parents to relate to neighbors, those people with whom a child comes in contact in school, and others in the community is very important to a child's well-being.

Alcohol or Drug Abuse

Current abuse of alcohol or other drugs requires the rejection of an application to adopt. Caseworkers must clearly document in the case record how the finding of such abuse was made.

An applicant who abused alcohol or drugs in the past should not automatically be excluded. An individual who has recognized his or her illness, has had treatment, and has abstained for years may well be such a resource. It is impossible to designate a specific period of years of abstinence that would guarantee that this illness is no longer a problem. Factors to be considered are not only the length of abstinence reported and the reliability of the information, but the stability, strength, and satisfaction for the individual in his or her current life. An assessment by an addiction or mental health professional may be helpful to determine if the applicant has dealt with past issues.

Since all of these factors show that the individual at one time responded to life's circumstances in an unhealthy and self-destructive way, it is important to consider whether the additional stress adoption would bring into his or her life might weaken the person's current adaptation and lead to danger of a repetition of the behavior. [18 NYCRR 421.16(q)]



RESOURCES

For more information on adoption study criteria, see:

- *Clarification of Adoption Study Criteria Related to Length of Marriage and Sexual Orientation*, issued as an Informational Letter in 2011 (11-OCFS-INF-05) and available at <http://ocfs.state.ny.us/main/policies/external/>

E. INQUIRIES TO THE STATEWIDE CENTRAL REGISTER AND OTHER STATES

Agencies must inquire of the OCFS Statewide Central Register for Child Abuse and Maltreatment (SCR) whether an applicant to adopt and/or any other person over the age of 18 who lives in the applicant's home is the subject of an indicated child abuse and maltreatment report in New York State or in other states as explained on the following pages. In New York State, the communication received back from the SCR informs the agency whether there is an indicated report naming the applicant as subject of a report.

The SCR will also notify the applicant in the event that a record of an indicated report exists and inform them that the inquiring agency has been so notified.

1. Making an Inquiry to the SCR in New York State

Use this procedure to make an inquiry to the SCR in New York State:

- a) Complete the top portion of the State Central Register Database Check Form (LDSS-3370). Instructions for completing the form are located on the back of the form. The form is available on the OCFS website at <http://www.ocfs.state.ny.us/main/Forms/cps/> and on the OCFS Intranet site at <http://ocfs.state.ny.net/admin/forms/SCR>. Included in the top section of the form, completed by the agency, is the agency's code, clearance liaison, telephone number of the liaison, and the agency's address.
- b) Provide the form to the applicant(s) and any other person over the age of 18 who lives in the home of the applicant(s) to complete and sign the lower portion of the form. The applicant and any other person over the age of 18 who lives in the home are required to list each of the addresses where they lived during the past 28 years. If the applicant/household member has difficulty recalling this information, they should record at least each city where they lived and record the relevant time period.
- c) Mail the LDSS-3370 to:

Office of Children and Family Services
Child Abuse & Maltreatment Register
P.O. Box 4480
Albany, NY 12204



RESOURCES

For more information about the Statewide Central Register Database, see:

- *Changes in the LDSS-3370 Form for the Statewide Central Register Database Check*, issued as an Informational Letter in 2009 (09-OCFS-INF-04) and available at http://ocfs.state.ny.us/main/policies/external/OCFS_2009/

2. Response From the SCR

If there is not an indicated report of child abuse or maltreatment in the SCR, the inquiring agency will receive a letter from the SCR to that effect. However, if the SCR has an indicated report concerning the applicant/household member, the SCR sends a letter to the applicant/household member notifying them that they are the subject of an indicated report and that they have the right to request an administrative hearing, before the agency is notified of the existence of the report.

The applicant/household member then has 90 days to request an administrative hearing. If an administrative hearing is not requested, the agency will be advised that the person is the subject of an indicated report. If the applicant/household member makes a

timely request, an administrative hearing is held. If the hearing officer affirms the indication using a fair preponderance test and determines that the report is relevant and reasonable, related to the application for approval as an adoptive parent, the agency is informed that the person is the subject of an indicated report. If the hearing officer does not affirm the indication or determines that the report is not relevant and reasonable, the agency is informed that the person is not a subject of an indicated report. The process described in this paragraph is a result of federal court decision in Valmonte v. Bane 18 F.2d 992 (1994). (*Also see 95 LCM-39*).

If the agency is notified that the applicant/household member is the subject of an indicated report, the agency must consider this factor, along with other background information, in determining whether or not to approve the applicant in accordance with guidelines established by OCFS. The agency may ask the applicant/household member to provide details of the situation(s) or incident(s) that resulted in the indicated report. He or she may also be asked to sign a release allowing the agency to receive a copy of the indicated report on file with the State Central Register.

If the agency decides to approve an applicant who is the subject of an indicated report, the agency must indicate the specific reasons why the applicant was determined appropriate to be approved as an adoptive parent in both the adoption home study and the case record.

If the agency rejects the applicant based on the indicated report, the applicant must be informed in writing of the specific reason(s) for the disapproval and notice of his or her right to a fair hearing under Social Services Law Section 424-a (Form LDSS-3374 “Notification of Right To Fair Hearing Under Section 424-a of the Social Service Law”). The applicant must request the fair hearing within 90 days of receiving the written notice of rejection.

The sole issue at the fair hearing is whether the applicant has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.



Note: For some applicants, the issue of whether there was a fair preponderance of the evidence that the person abused or maltreated a child or children was already addressed at a fair hearing held in accordance with the Valmonte process noted previously. [SSL 424-a(1)(c); 18 NYCRR 421.15 (c)(7) and 421.16(o)]

3. Child Abuse/Neglect Clearances with Other States

The federal Adam Walsh Child Protection and Safety Act of 2006 requires that agencies ask applicants who want to become foster or adoptive parents whether they, or any person age 18 or older who lives in the applicant’s home, lived in any other state(s) within the five years preceding the application. If the applicant did live in another state within the five-year period preceding the application for certification or approval, the agency must contact that state(s) to request child abuse and maltreatment information

maintained by the child abuse and maltreatment registry in that state about the applicant/household member over the age of 18.

The federal definition of “State” includes, in addition to the fifty states of the United States, the District of Columbia; Commonwealth of Puerto Rico; the U.S. Virgin Islands; Guam; and American Samoa.

The federal requirements were implemented by OCFS in regulation, 18 NYCRR Parts 421 (adoption) and 443 (foster care). Caseworkers should be aware that some other states are not able to release information directly to an agency because of their own state statutes. Caseworkers may need to obtain a release form, signed by the applicant, giving permission for you to obtain this information. The applicant may need to obtain the information from the other state directly and provide it to the agency in New York. New York State’s authority to grant access to agencies in other states is set forth in SSL §422(4)(A)(z).

If the applicant or another adult who lives in the applicant’s home has a history of child abuse or maltreatment in another state, the agency must determine whether to approve or deny the application based on information from the other state and information from the applicant, using the same criteria used to evaluate indicated reports from within New York State. If the application is approved, the caseworker must document in the adoption study case record the specific reason(s) for the approval. The agency must safeguard the confidentiality of the information received from the other state and may not use the information for any other purpose than conducting the background check as part of the adoption study. [18 NYCRR 421.16(p)]

A list of contact persons in other states is available on the website of the National Resource Center (NRC) for Foster Care and Permanency Planning at Hunter College at www.hunter.cuny.edu/socwork/nrcfcpp/downloads/policyissues/State_Child_Abuse_Registries.pdf

If more assistance is needed in contacting or following up with another state, agencies may contact their OCFS/NYSAS or an OCFS regional office for assistance. A list of the OCFS regional offices and their contact information is located at http://ocfs.state.ny.us/main/regionaloffices_main.asp. Caseworkers should document, in the applicant’s file, who was contacted in the other state and their response. A written response from the other state must be kept in the file as well.



RESOURCES

For more information about out-of-state clearance, see:

- *Definition of “State” for the Purpose of Out-of-State SCR Checks*. (08-OCFS-INF-03), issued as an Informational Letter in 2008 and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/

F. CRIMINAL HISTORY BACKGROUND CHECK

Criminal history background checks of applicants to adopt are required by federal and state law as one means of protecting children. Agencies authorized to approve applicants as adoptive parents must complete a national and state criminal history record check of each applicant and any other person over the age of 18 who currently lives in the home of the applicant and evaluate the results of such checks. [SSL§378-a(2)]

In addition, an applicant must sign a sworn statement indicating whether, to the best of his or her knowledge, the applicant or any other person over the age of 18 who lives in the home of the applicant has ever been convicted of a crime in this state or any other jurisdiction. [18 NYCRR 421.15(c)(9)]

An authorized agency must receive a response from OCFS to the criminal history record check with the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) regarding any prospective adoptive parent and each person over the age of 18 who is currently residing in the applicant's home. Each applicant and all household members over the age of 18 must be fingerprinted so the DCJS and the FBI can determine whether they have criminal histories. DCJS checks criminal records in New York State and the FBI checks criminal records from all states and federal territories.

Caseworkers should carefully review three OCFS policy directives in order to fully understand this process. These documents, which can be found on the OCFS website and Intranet under "Policy Directives," are:

- 07-OCFS-ADM-01 *State and National Criminal History Record Checks (for Foster/Adoptive Parents)*, issued on February 7, 2007, which provides complete, up-to-date guidance on the subject of criminal history record checks for foster and adoptive parents. This includes criteria for determining whether to deny an application based on a discretionary conviction or open charge. It also addresses the issue of safety assessments that must be performed by the authorized agency whenever a person has a conviction or open charge. The section of this ADM on presumptive disqualifying crimes was superseded by the provisions dealing with mandatory disqualifying crimes addressed in 08-OCFS-ADM-06. 07-OCFS-ADM-01 remains in effect except for the provisions regarding presumptive disqualifying crimes.
- 08-OCFS-ADM-06, *Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)*.
- 09-OCFS-ADM-18, *Live Scan Technology for Fingerprinting Foster and Adoptive Applicants*.

If an applicant or any other person over the age of 18 who lives in the home of the applicant is found to have a criminal charge or conviction, the caseworker should consult with his or her supervisor and the agency attorney about the impact, if any, of the criminal history on their application to be approved as an adoptive parent and to adopt. (*See Section 3 for more information.*) This consultation is also important so that

applicants are provided with the due process and procedural rights related to the criminal history background check discussed in the three ADMs listed above.

1. Live Scan Fingerprint Technology

Effective October, 2009, fingerprints for foster and adoptive parent applicants, and all other household members age 18 or older, are collected through a digitized technology called Live Scan. Rather than using ink and paper to collect fingerprints, agencies now refer applicants to a location where Live Scan fingerprints are collected using digitized technology. The benefits of the technology include immediate detection of problem fingerprints so that they can be redone while the applicant is present, thereby eliminating the need for the applicant to return a second time. And the prints are immediately transmitted electronically to DCJS and the FBI, which eliminates the time it would take to mail paper copy prints.

The procedure for referring applicants to a contract site that collects the fingerprints is explained in 09-OCFS-ADM-18, *Live Scan Technology for Fingerprinting Foster and Adoptive Applicants*. Caseworkers must provide applicants, and all household members age 18 or older, with two forms related to Live Scan:

- Notice Regarding Fingerprinting Requirements; and
- Request for NYS Fingerprinting Services—Information Form (OCFS-4930).

Both forms are available on the OCFS website in English and Spanish. Applicants should be assisted in filling out the Request for NYS Fingerprinting Services—Information Form. The agency completes a portion of the form as well. Agencies need to inform applicants and household members over the age of 18 to schedule an appointment at one of the Live Scan sites at www.L1enrollment.com or by calling 1-877-472-6915. Applicants are able to select a location closest to their home or workplace and extended hours are available at most locations. Applicants will need to bring two forms of identification to their appointment, including a photo I.D. Applicants do not pay a fee for the fingerprinting; the costs of fingerprinting are paid by OCFS and local social services districts.

If an applicant or household member suffers a disabling condition that prevents them from leaving the home, or they are difficult to finger print, traditional ink-and-roll fingerprints may be taken and sent to the address in the ADM.

2. Search and Retain Function

After the initial criminal history record search is conducted, DCJS retains the fingerprints *and* notifies OCFS if there are any future arrests within NYS, and OCFS notifies the agency. This means that an applicant or household member age 18 or older could have no criminal charges or convictions at the time they are fingerprinted for their application but could be arrested at a later date. If this occurs for an adoptive parent who has been approved or for another household member over the age of 18, and the child is placed in the home but the adoption is not yet final, the agency needs to follow specific procedures for assessing the safety of the child and may need to revoke the parent's approval and remove the child, depending upon the nature of the crime. This is, of

course, a very serious situation that the caseworker should immediately bring to the attention of their supervisor and the agency attorney.

The procedures for dealing with such situations are specified in an Administrative Directive issued by OCFS in 2007 titled *State and National Criminal History Record Checks (for Foster/Adoptive Parents)* (07-OCFS-ADM-01), which provides a comprehensive description of the criminal history record check process. This ADM is available at http://ocfs.state.ny.us/main/policies/external/OCFS_2007.



Note: A safety assessment must be performed whenever a response from OCFS indicates that a person in the home has a conviction or open charge for a crime irrespective if there are any children in the home.

The FBI does not provide a search and retain function. Therefore, the FBI check is a point-in-time check that provides one-time results done as part of the home study.

3. Getting the Results

The results from the criminal history check by DCJS and the FBI are returned to OCFS. OCFS reviews the results and compiles a criminal history record summary and sends it to the agency where the application was taken. Generally, results from both DCJS and the FBI are included in one summary from OCFS. DCJS and the FBI prohibit dissemination of the actual criminal history record (rap sheet); that record is retained by OCFS. For charges or convictions within New York State, the summary compiled by OCFS includes the specific crimes for which the person was convicted or charged, the date of the arrest and/or conviction, and the jurisdiction in which the arrest or conviction took place.

For convictions outside New York State, as reported to OCFS by the FBI, OCFS can provide only very limited information to the voluntary authorized agency because of federal restrictions on releasing this information to non-governmental agencies. The OCFS summary provides the voluntary authorized agency with less specific information than provided in regard to information secured from DCJS. The summary information provided in relation to a crime committed outside New York State is limited to the category of the crime (mandatory disqualifying crime or discretionary disqualifying crime) (*see discussion below*). The agency should encourage the applicant to sign a consent form so OCFS can release to the voluntary authorized agency more information about the nature and specificity of the crime(s). If the applicant refuses to sign a consent form, once it is known that a criminal history exists outside of New York State, the home must be denied approval. [18 NYCRR 421.27(d)(4)]

The OCFS summary will include one of the following outcomes (each is discussed in more detail on the following pages):

- **No criminal record found.** This result means that there are no convictions or open arrests found through DCJS or the FBI for felonies and misdemeanors, and the agency may proceed with the approval process.
- **History of one or more convictions/mandatory disqualifier or open charges that if convicted of would be discretionary disqualifiers.** In this

case, the application must be denied. See discussion on the next page and SSL§ 378-a(2), 18 NYCRR 421.27(d)(1), and 08-OCFS-ADM-06, *Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)*.

- **History of one or more convictions/discretionary disqualifier.** In this case, the agency has the discretion to approve or deny the application based on a thorough assessment of the situation.
- **Pending matters/hold in abeyance.** This means that there may be a charge or conviction of a mandatory disqualifying crime but further review is needed.

Mandatory Disqualifying Crimes

Effective October 1, 2008, agencies are mandated by federal and state law to deny prospective foster and adoptive parents for certain felony convictions, referred to as “mandatory disqualifying crimes.” Further, if already certified or approved foster or adoptive parents are convicted of these crimes after October 1, 2008, they must have their certification or approval revoked. The law does not affect persons who were fully certified or approved as foster or adoptive parents before October 1, 2008, for convictions that occurred before that date.



Note: If a person was fully certified or approved as a foster parent before October 1, 2008, with a presumptive disqualifying conviction applies for approval as an adoptive parent on or after October 1, 2008, such conviction would then be treated as a mandatory disqualifying conviction.

The law also does not change in any way the requirements regarding crimes committed by household members age 18 and over. All are subject to discretionary consideration, based upon a safety assessment (Chapter 623 of the Laws of 2008 that amended section 378-a (2) of the Social Services Law).

The list of disqualifying crimes is kept up to date by the OCFS Counsel’s office; a copy can be obtained by contacting one of the OCFS Regional Offices.

There is a limited spousal abuse exception to when a crime is considered a mandatory conviction. It only applies when the applicant was convicted of the felony assault of his or her spouse and the applicant is able to demonstrate at an administrative hearing on the denial of such person’s application for approval that the applicant was a victim of physical, sexual, or psychological abuse by the victim of the crime and that such abuse was a factor in causing the applicant to commit the crime.

Criminal convictions of adoptive applicants: When a mandatory disqualifying conviction exists for someone applying to adopt, the agency must take the following steps:

- Advise the prospective adoptive parent(s) who have been convicted of a mandatory disqualifying crime that they are ineligible to be approved as adoptive parents.
- Provide the applicant with a Denial/Revocation Letter/Notice of Results of Fingerprinting/ Criminal Record Found form. This form can be found as

Attachment 2a to 08-OCFS-ADM-06 [*Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)*] under Administrative Directives, 2008 Policy Directives, at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/

Criminal convictions of approved adoptive parents: If an agency is working with a fully approved adoptive parent who is looking to adopt a child and it is learned, through the search and retain procedures for criminal background checks, that the adoptive parent has been arrested for a mandatory disqualifying crime on or after October 1, 2008, the agency must take specific steps that are outlined in 08-OCFS-ADM-06. These steps include conducting a safety assessment in accordance with section 378-a(2)(h) of the SSL, including:

- whether the subject of the potential mandatory disqualifying conviction lives in the home;
- the extent to which such person may have contact with foster children or other children living in the home;
- the status, date, and nature of the arrest (taken from the criminal history summary provided by OCFS).

If there is a child(ren) placed in foster care in the home, the safety assessment is used to determine whether or not the child can remain. If a decision is made to remove the child(ren), the removal and conference standards outlined in 08-OCFS-ADM-06 must be followed. If the arrest results in a conviction for a mandatory disqualifying crime, the agency must revoke the approval, advise the applicant of the revocation, and provide them with the Denial /Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found available on the OCFS website as Attachment 2a to 08-OCFS-ADM-06.

Discretionary Qualifying Crimes

When the prospective adoptive parent, or other person age 18 or older who lives in the home, has a criminal charge or conviction for what is referred to as a Category 2 crime [see 07-OCFS-ADM-01, *State and National Criminal History Record Checks (for Foster/Adoptive Parents)*], the authorized agency may approve or deny the application and is not required to revoke the approval of a previously approved adoptive parent. The reasons why a prospective or approved adoptive parent is determined to be appropriate and acceptable to adopt in light of the results of the criminal history record check must be documented in the applicant's or approved adoptive parent's case record and in the record in CONNECTIONS.

When the agency becomes aware of the discretionary qualifying crime, a safety assessment must be conducted of the conditions of the household that includes whether the person who was charged or convicted of the crime lives in the household, the extent to which such person may have contact with children living in the home, and the status and nature of the criminal charge or conviction. There are very specific steps for the safety assessment, as well as actions an agency must take if there are children already placed in the home, but not yet adopted. The caseworker must complete the safety

assessment in the CONNECTIONS system. For more information about the content of the safety assessment and the criteria for deciding whether to approve or deny an application when there is a discretionary criminal history, see 07-OCFS-ADM-01.

Convictions for nonviolent crimes and arrests without convictions may signal caution but should never result in automatic exclusion. They warrant careful exploration of factors more immediately related to parenting and the safety of the children. In the case of an individual with a recent history of arrests for violent actions, it is necessary to determine through interviews with the individual, family members, and others whether resorting to violence is a pattern that might affect family life.

Pending Matters/Hold in Abeyance

An agency must hold in abeyance (pend) the decision on whether to approve an adoptive applicant when his or her criminal history record reveals a charge or conviction of a mandatory disqualifying crime that requires further review. This includes in-state charges or convictions that need further review by OCFS or out-of-state crimes about which the agency needs to collect more information. It may involve an open charge for a crime for which a conviction is a mandatory disqualifier or conviction of a crime which, depending on the victim of the crime, may be a mandatory disqualifier. The agency may proceed with the application process but cannot finally approve the home until OCFS provides an updated criminal history record summary. If the updated summary reveals that the disposition of the charge was a conviction for a mandatory disqualifying crime, the application must be denied.

If there is a charge or conviction for any crime, a safety assessment, as outlined in 07-OCFS-ADM-01, must be conducted.

4. Confidentiality Requirements

The summary of the criminal history record provided by OCFS to the agency is confidential

The agency may not disclose criminal history information to the applicant or current foster or adoptive parent, except when an authorized agency denies an application or revokes an approval or certification pursuant to section 378-a (2) (e) of the SSL. In that case, the authorized agency must provide the criminal history record summary to the applicant or current adoptive parent. The exception described above is the *only* circumstance in which the criminal history summary is given in writing to an applicant or current foster or adoptive parent.

It is permissible during the safety assessment to verbally disclose to the fingerprinted individual the following items from the criminal history record summary:

- The crime for which the fingerprinted individual was charged or convicted
- When such person was arrested or convicted
- In what court or jurisdiction such person was charged or convicted

Disclosure of this information to the fingerprinted individual in the presence of other persons is permissible only with the fingerprinted individual's consent.

The criminal history record check summary may not be disclosed by one authorized agency to another authorized agency, even with the consent of the person who was the subject of the criminal history record check. One exception is when an authorized social services district requests the criminal history record check summary in accordance with a contract it has with a voluntary authorized agency. [SSL§ 378-a(2)(i); 18 NYCRR 421.27(g)]



RESOURCES

For more information about criminal history record checks, see:

- *Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)*, issued as an Administrative Directive in 2008 (08-OCFS-ADM-06) and available at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/

G. APPROVAL/DISAPPROVAL OF ADOPTION HOME STUDIES

The agency must complete an adoption home study within the time frames specified in regulation, which is within six months of receiving the application for applicants in the first and second priority groups (*see Section C.4*). Applicants must be notified of the results of the study in writing (*see page 10-33*).

Once the study process is initiated, the agency must conclude the adoption study process within four months of initiation with a decision of discontinuation, rejection, or approval. Exceptions can be made when:

- Illness or geographic absence of the applicant makes him or her unavailable for a substantial part of the four-month period. The caseworker must document the applicant's unavailability in the case record and efforts made to contact the applicant.
- Unavailability of agency staff interrupts the process. The four-month period may be extended, but not to more than six months, if the applicant agrees to an extension in writing. If the applicant agrees to delay to avoid a change in caseworkers, the record must show when this agreement was obtained. If the applicant does not accept such delay, the study must be concluded within the four months through the use of substitute staff or purchase of service. [18 NYCRR 421.15(h)]

1. Discontinuation of a Study

An adoption study can be discontinued either with the consent of the agency and the applicant or unilaterally by the applicant. The applicant's record must reflect the discussion leading to the decision to discontinue the study and must document that the applicant was informed in writing of the discontinuance. When the applicant does not agree to a discontinuation, the applicant must either be approved or disapproved. [18 NYCRR 421.15(f)]

2. Approval of an Applicant

When an adoption study has been completed and an agency intends to approve an applicant, it must:

- Prepare a written summary of the home study findings and activities, including significant characteristics of the family members, their interaction, relationship to other persons and the community, child rearing practices and experiences, and any other material needed to describe the family for adoption purposes. The summary is helpful in making placement decisions about children and is used to facilitate adoptive placements across agencies. [18 NYCRR 421.15(e)(1)]
- Arrange for the applicant to review the written summary of the home study, with the exception of any comments by references who have requested confidentiality. The applicant must be encouraged to express his or her views on the substance of any significant aspect of the written summary and must be given the opportunity to enter his or her reaction as an addendum to the written summary. Both the applicant and the caseworker must sign the summary after it has been reviewed and any addendum has been attached.
- Send a dated, written notice of approval to the applicant.

A review of the written summary of the home study by the family helps to assure that the summary represents the family's view of themselves. It should honestly and accurately portray the family's strengths and weaknesses and their potential ability to effectively parent children with special needs. [18 NYCRR 421.15(e)(1–6)]

3. Disapproval of an Applicant

An applicant can be disapproved if his or her lack of cooperation does not permit the study to be carried out. While an agency should allow for vacations, ill health, employment requirements, and reasonable interruptions, if an applicant does not keep appointments, fails to produce documents, and does not cooperate with the process, continuing the process becomes wasteful of staff time and the applicant should be disapproved. The caseworker should document details about the lack of cooperation in the case record. [18 NYCRR 421.15(g)(1)]

After the completion of an adoption study based on sound casework principles, an applicant may be disapproved if the agency determines 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 approval of the applicant(s) would not be in the best interests of the children awaiting adoption. [18 NYCRR 421.15(g)(2)]

It would be difficult, if not impossible, to spell out comprehensively the specific circumstances in which the above findings would be appropriate. Caseworkers, in consultation with their supervisor, must consider the way such conditions might weaken a family's ability to care for an adopted child. A decision must be based on information

related to areas of the home study listed in Section D.2 (18 NYCRR 421.16). The ways in which these abilities were assessed and led to the conclusions shown in the study should be clearly recorded.

The decision to reject an applicant must be made by at least two staff members in conference, one of whom must be at a supervisory level. The names of the participants in the conference and the reason for the rejection must be stated in the applicant's record.

The applicant must be informed in writing that he or she has not been approved and the reasons why. The letter must also offer the applicant an opportunity to discuss the decision in person with the caseworker's supervisor. Such letter setting forth the reason(s) for the denial must include a notice to the applicant, in bold face type of the applicant's right to request and be granted a hearing in accordance with SSL §372-e. It must inform the applicant that he or she has a right to an administrative fair hearing and should state the procedure to be used for this purpose. The applicant has 60 days from receiving the notice to request an administrative hearing [18 NYCRR421.15(g)(3), (4), (5),(6) and (7)]. The letter must also contain the following address where the applicant can request a hearing:

New York State of Children and Family Services
Office of Legal Affairs
Once Commerce Plaza
Albany, New York 12260

H. FAMILY ADOPTION REGISTRY

1. Overview

The Family Adoption Registry is one of the components of the OCFS online *Adoption Album—Our Children, Our Families*, a child photolisting and family registry system. The Family Adoption Registry can provide social services districts and voluntary authorized agencies with a list of adoptive applicants who are willing to adopt handicapped and hard-to-place children, and can also match a waiting child with registered families, based on specific criteria. Caseworkers access the Family Adoption Registry, including the child-family and family-child matching features, through the on-line browser-based application for *The Adoption Album—Our Children, Our Families*. Caseworkers should consult their supervisors and information technology staff to obtain needed passwords and access instructions. Caseworkers can contact OCFS/NYSAS if they have problems accessing the application that cannot be resolved locally.

Agencies are required to use the Family Adoption Registry under specific circumstances by SSL§372-b(2-a) and OCFS regulations (18 NYCRR Part 424) (*see Application to Adopt, Section C.3*). The registry also provides another tool for agencies to use in identifying prospective adoptive families for waiting children.

Agencies are required to tell people who are applying to adopt handicapped or hard-to-place children about the existence and purpose of the Family Adoption Registry and to inform them that their names and the characteristics of the children whom they wish to adopt will be made available upon request to all adoption agencies in the state.

This means that a caseworker in a local social services district or a voluntary agency, who has permission to access the Family Adoption Registry search functions, may enter information about a waiting child on their caseload and search the system for families willing to consider adopting a child with characteristics that match those of the waiting child. This search feature is one more tool caseworkers have for the recruitment process. Any person who applies to adopt a handicapped or hard-to-place child must have his or her name, address, and additional pertinent information in the Family Adoption Registry.

The information entered in the Family Adoption Registry is based on the information provided on the Application to Adopt Form (LDSS-857). The Family Adoption Registry allows the agency to match the applicant's profile and acceptable child characteristics with children referred for photolisting. Consequently, a prospective adoptive parent(s) can be matched only on information provided to the Family Adoption Registry.

2. Families Who Are Registered

In determining who should be entered into the Registry, the agency representative must be aware that the family is willing to adopt a photolisted child. Most, but not all, photolisted children are considered handicapped or hard-to-place.

A handicapped child means a child who has a specific physical, mental, or emotional condition or disability of such severity or kind which, in the opinion of OCFS, would constitute a significant obstacle to the child's adoption. These conditions include, but are not limited to:

- any medical or dental condition that will require repeated or frequent hospitalization, treatment, or follow-up care;
- any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury, or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for a paid job, or makes or may be expected to make a child handicapped (as described in section 2581 of the Public Health Law);
- any substantial disfigurement, such as the loss or deformation of facial features, torso, or extremities; or
- a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity, or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability. [18 NYCRR 421.24(a)(2)]

A hard-to-place child means a child, other than a handicapped 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 of the termination of a previous adoptive placement;
- is a member of a sibling group free for adoption;

- is eight years old or older and from a minority ethnic group that is substantially overrepresented in NYS foster care;
- is 10 years old or older; or
- has been in foster care for 12 months or more before the foster parents sign the adoptive placement agreement. [18 NYCRR 421.24(a)(3)]

3. Initial Registration Process

When prospective adoptive parents attend agency orientation meetings, they should receive information about the Family Adoption Registry and the Application to Adopt form. Once they complete the Application to Adopt, the agency must enter their information into the Family Adoption Registry if they have applied to adopt children with the characteristics listed above. Agencies should enter information into the Family Adoption Registry, even if SCR screening has not been completed or the home study is not finished.

In-State Families

Families who live in New York State, have an approved home study, and are interested in adopting photolisted children may register directly on the Family Adoption Registry by following the instructions at:

<https://apps.ocfs.ny.gov/Adoption/Family/ViewEdit/HomeStudy.aspx>.

Once the on-line registration process is complete, families who register directly on the Family Adoption Registry must print a copy of the registration and send it, along with verification of their approved home study, to OCFS/NYSAS. Families who have completed an Application to Adopt but do not yet have an approved home study must be registered on the Family Adoption Registry by the agency that took the application. The Family Adoption Registry registration process is completed on-line and asks for demographic information about the family and information about the child(ren) the family is seeking to adopt, including gender, age, language, religion, and special needs. The family may choose to include their photo on the Family Adoption Registry, although this is optional.¹⁰

If the caseworker registered the family on the Family Adoption Registry before the home study is completed, the caseworker must update the Family Adoption Registry once the home study has been completed. This update either indicates that the family's home study has been approved, or the caseworker removes the applicant's name from the Registry if the applicant was rejected or the study was discontinued.

At least once every year, the registering agency must initiate contact with an approved applicant to confirm that the information contained in the Family Adoption Registry is accurate and that the applicant is still interested in adopting a handicapped or hard-to-place child. The agency must remove the family from the registry when a child is placed in the home for adoption (when the Adoption Placement Agreement is signed). (18 NYCRR 424.3)

¹⁰ Source is the OCFS adoption website at the following link:
<https://apps.ocfs.ny.gov/Adoption/Family/ViewEdit/HomeStudy.aspx>

Out-of-State Families

Families who live out-of-state may register themselves on the Family Adoption Registry. Families have 30 days from the date of registration to submit proof of an approved home study to OCFS/NYSAS or the initial registration expires.

4. Updating and Inactivating Registrations

Agencies through which a family filed the Application to Adopt are responsible for maintaining accurate and up-to-date information on in-state families that are registered in FAR. (18 NYCRR 424.3)

Information on a prospective adoptive parent who is registered on the Family Adoption Registry must be updated when:

- There is a change in home study status.
- The prospective adoptive parent indicates that he or she would like to change the “acceptable child characteristics” that were previously entered. (The new description must meet the criteria for a hard-to-place or handicapped child(ren).
- There is a change to any information contained in the family’s registry.

5. Family Photolisting

The Adoption Album has expanded the required process of registering prospective adoptive parents by including the option of a family photolisting. The family photolisting, which is an optional part of the family’s listing on the Family Adoption Registry, takes matching of children with parent(s) a step further by placing more focus on the adoptive families and sharing their information among social service districts and voluntary authorized agencies. Families participating in the family photolisting option must be:

- Approved as adoptive parent(s) by a New York State authorized agency in accordance with New York State standards
- Registered in the Family Adoption Registry

Families may not meet these criteria when they are initially registered in the Family Adoption Registry. When all the criteria are met, the agency can photolist the family. Family photolisting is available to agencies on the OFCS Intranet and can be accessed by caseworkers through the same permissions and procedures used to access the other portions of the Family Adoption Registry, including child photolisting.

Edits and Updates of Family Photolistings

Agencies are responsible for maintaining accurate and up-to-date information on photolisted families. The social service district or voluntary authorized adoption agency that photolists the family must maintain the information and make changes as they occur. Once every year, at a minimum, the photolisting agency must initiate contact with the family to ensure the family is still interested in adopting a handicapped or hard-to-place child. In addition, agencies should make subsequent changes to the photolisting record as changes are made to the information maintained on the Family Adoption Registry.

Inactive Family Photolistings

Agencies can inactivate a family photolisting record once a family has indicated it is no longer willing to adopt a handicapped or hard-to-place child, the family has indicated it no longer wants to be photo-listed, the family's registry has expired, or the agency requests that the family's photolisting be removed.

Agencies must submit a request to OCFS/NYSAS to inactivate a family from the family photolisting by submitting a Change Request as outlined in the *Adoption Album Training Manual*:

http://www.ocfs.state.ny.us/adopt/assets/AdoptionAlbumTrainingManual_Oct08.pdf

I. ADOPTION ALBUM—SEARCH AND MATCH PROCEDURES

The Adoption Album—Our Children, Our Families allows an agency to search for potential children on behalf of a family and to match a waiting child with registered families. The Adoption Album allows agencies to administer matches and searches based on the information contained on a family's Family Adoption Registry and the information included in the child's photolisting. In addition to searching and matching, this system allows an agency to verify the families registered and photolisted with their agency:

1. Matching a Waiting Child with Registered Families

Matching should be done when an agency is looking for a list of families who wish to adopt a child with characteristics that match those of an identified child, including the child's age and gender, as well as the maximum number of children a family will adopt (if the child is part of a sibling group). When the agency enters the child's referral ID number, Child Identification Number (CIN) or CONNECTIONS person ID number, the system produces a list of potential adoptive families based on the exact match of the families' demographics to the photolisted child. The caseworker can view each family's information, including a photo of the family if family members chose to have it included in the Family Adoption Registry.

If an adoptive home has not been found for a handicapped or hard-to-place child within three months of the date on which the child was freed for adoption, the agency with responsibility for the care of the child must inquire with the Family Adoption Registry to identify prospective homes for the child and must continue to make an inquiry at least once every three months until the child is placed in an adoptive home. Agencies may access the Family Adoption Registry at any time for a prospective adoptive home for a handicapped or hard-to-place child in its custody, regardless of the child's legal status.

If the agency finds a prospective adoptive parent registered with the Family Adoption Registry who has expressed an interest in adopting a child with the characteristics of the available child, the agency responsible for the care of the child must contact the agency that registered the potentially suitable parents and do one or more of the following:

- verbally discuss the suitability of the potential home for the child;
- ask the registering agency to send a copy of the home study or a summary of it; or

- be in direct contact with the potential adoptive parents, when deemed appropriate by the registering agency.

The registering agency must cooperate with the agency responsible for the child's care in conducting the home study and, when appropriate, facilitating the placement of the child in a home which has been studied by the registering agency. The registering agency may inform the agency with care of the child that an approved home is unavailable only if it has a specific placement planned for that home within a period not to exceed two months from the inquiry date. (18 NYCRR 424.4)

2. Searching for a Child for Registered Families

An agency can conduct a search in the Family Adoption Registry on behalf of a family for a child that matches the family's needs, based on gender, age range, maximum number of children, willingness of the family to accept a legal risk placement; and the child's needs, ethnicity, religion, and language. In addition, the agency can refer the family to *The Adoption Album* website (www.ocfs.state.ny.us/adopt), where they can search for a child. The system also allows a caseworker to produce a list of families registered in the Family Adoption Registry who meet certain criteria, as entered into the system by the caseworker.

Cooperation Between Agencies to Facilitate Matching

The electronic matching process is a tool that caseworkers have available to help identify families who have expressed interest in adopting a child with characteristics similar to those of the available child. Once the caseworker has identified one or more potential adoptive families for the child, the caseworker needs to contact the agency working with each identified family to gather more information and to meet with the family, as appropriate.

It is essential that the two agencies work together to decide whether to provide a potential family with more information about the child, introduce the child and the family, and initiate visits if that seems like the appropriate next step. Both agencies are responsible for sharing information in a timely fashion and following up with inquiring agencies and families. If there is a geographical distance between the child and the family, the two agencies should develop a plan for overcoming this barrier. If the decision is made to place the child with the family, a supervision agreement between the two agencies that identifies the responsibilities that each agency will have in facilitating and supervising the adoption placement will be helpful in carrying out the steps outlined in the next section of the chapter (placement of children with approved adoptive applicants).

There may be prospective families identified through the matching process of the Family Adoption Registry who, for whatever reason, are not selected for the particular child for whom the caseworker did the match process. However, the caseworker should consider whether those families may be appropriate for other children waiting for adoption in the agency. The caseworker should consult with a supervisor and colleagues about waiting children who are on their caseloads for whom an identified family might be considered.

J. PLACEMENT OF CHILDREN WITH APPROVED ADOPTIVE APPLICANTS

1. Preparation for Placement

When a family has been identified as capable of meeting the needs of a specific child, intensive preparation of both the child and the adoptive parent(s) must begin (18 NYCRR 421.18):

- Adoptive parents must be informed of the procedures necessary for finalizing the adoption.
- An effort must be made to place the child with adoptive parents of a similar and compatible religious background. This is in compliance with Section 373(3) of the SSL, which requires a court, when practicable, to give custody through adoption only to persons of the same religious faith as the child.
- Decisions about placement must be made on the basis of the best interests of the child, including but not limited to the following considerations:
 - The appropriateness of placement in terms of the age of the child and of the adoptive parent(s);
 - The physical and emotional needs of the child in relation to the characteristics, capacities, strengths, and weaknesses of the adoptive parent(s).
 - The cultural, ethnic, or racial background of the child and the capacity of the adoptive parent to meet the needs of the child with such a background as one of a number of factors used to determine best interests. Race, color, or national origin of the child or the adoptive parent may be considered only when it can be demonstrated to relate to the specific needs of an individual child.
- If the child is part of a sibling group, the agency must follow the requirement that minor siblings or half-siblings be placed together, unless the social services district or the voluntary authorized agency with guardianship and custody has determined that the placement would be detrimental to the best interests of one or more of the children. This determination must establish that the placement would be contrary to the health, safety, or welfare of one or more of the children. It must be made after consultation with, or an evaluation by, other professional staff, such as a licensed psychologist, psychiatrist, other physician, or certified social worker. Factors to be considered in making a determination of whether siblings or half-siblings may be placed separately must include, but are not limited to:
 - the age differences among the siblings;
 - the health and developmental differences among the siblings;
 - the emotional relationship of the siblings to each other;
 - the individual service needs of the siblings; and

- the attachment of the individual siblings to separate families/locations.

The factors used by the social services district to determine whether siblings or half-siblings are to be placed separately must be documented in the children's case records. In the case of a child in the guardianship and custody of a voluntary authorized agency, the factors used to determine whether the child and the child's siblings or half-siblings are to be placed separately must be documented in the children's case records.

At the time prospective adoptive parents indicate a desire to adopt a particular child, they must be informed if the child has siblings or half-siblings, and, if so, whether the siblings or half-siblings are free for adoption. The parents must be asked if they would also be willing to adopt the child's siblings or half-siblings who are free for adoption.

The caseworker must discuss with the adoptive parents their willingness to facilitate contact between the adopted child and any siblings or half-siblings of the child, and to inform the adoptive parents of the availability of services, if any, to assist in establishing and maintaining sibling contact. If a sibling or half-sibling to the child being placed becomes free for adoption in the future, the adoptive parents should be considered as a resource for the newly freed child. Termination of parental rights does not sever sibling ties. [18NYCRR 421.2(e); 421.18 (b)]

Subsidy

The social services district or voluntary agency responsible for the adoption placement must provide information to the foster parent(s) or prospective adoptive parent(s) regarding the adoption subsidy program. This includes an explanation of the criteria used to determine whether a particular child is hard to place or handicapped for adoption subsidy purposes.

To satisfy federal Title IV-E adoption assistance requirements, agencies are required to show that a reasonable but unsuccessful attempt was made to place a child with appropriate parents without subsidy, except when it has been determined not to be in the best interest of the child "because of such factors as the existence of significant emotional ties with the prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative . . ."

When a child has been identified for placement with the adoptive parent(s), the caseworker must indicate whether the child is eligible for subsidy and clarify any questions the parent(s) may have on the subsidy program. [18NYCRR 421.24 (b)(1); DHHS Child Welfare Policy Manual, Section 8.2B.11]

If the child will be placed for adoption with the current foster parents, an Adoption Subsidy Agreement may be signed and submitted at any time, once the termination of parental rights petition has been filed or a plan has been made to free the child. If the child is placed in a new pre-adoptive foster home, the Adoption Subsidy Agreement is to be signed at the time of the adoptive placement.

If the prospective adoptive parent(s) are approved adoptive parent(s) and not certified or approved foster parent(s), the Adoption Subsidy Agreement is to be completed and signed before placing the child and a pre-finalization subsidy must be paid upon placement. In this circumstance, it is important for the caseworker to have the Adoption Subsidy Agreement submitted to NYSAS as soon as an approved adoptive resource is identified as the prospective adoptive parent(s) for a child who is freed for adoption.

Adoptive parents should be informed that an application for subsidy may be made subsequent to the adoption being final if—and only if—they become aware of an eligible condition or disability after such finalization and a physician certifies that the condition or disability existed prior to the adoption (*see Chapter 12 for details on Adoption Subsidy*).

2. Placement

Adoption Placement Agreement

The prospective adoptive parent(s) and an agency representative must sign an adoptive placement agreement that contains a statement of the rights and responsibilities of the adoptive parents and the agency. This is signed at the time the child is placed in the home of the prospective adoptive parents or, if the child has been residing in the home in a foster care placement, at the time the foster parents make the decision to adopt the child. Form LDSS-570 is the approved adoptive placement agreement. The placement agreement should be discussed with the adoptive parent(s) before it is signed. [18 NYCRR 421.18 (k)]

To complete Form LDSS-570—Adoptive Placement Agreement, the agency must:

- enter name of adoptive parent(s);
- enter address of adoptive parent(s);
- enter the name of the district/agency, the first name, and date of birth of the child;
- enter the name of the district/agency as appropriate;
- ask the adoptive parent(s) to read, sign, and date the agreement;
- enter the name of the agency and the signature of the agency official;
- provide adoptive parent(s) with a copy of the signed agreement.

Special Considerations with Separated Adoptive Applicants

In a situation when a separated person is adopting a child and the couple reunites after the placement of a child, but before the finalization of the adoption, the returning spouse must participate in the adoption application process. An application for approval as an adoptive parent must be submitted by the returning spouse, the home study updated to include the returning spouse, a national and state criminal history check completed on the returning spouse, and an inquiry made of the Statewide Central Register (and, if applicable, a request for information to another state's register) on the returning spouse. The returning spouse must also sign the Adoption Subsidy Agreement. The returning

spouse is not required to adopt the child when the reunion takes place after the finalization of the adoption. However, SSL§101.1 requires the returning spouse to support the child as a stepparent when such child is receiving certain public benefits.

In a legal separation, and subsequent reconciliation, when the return of the spouse takes place after the child is placed but before the adoption is finalized, particular attention should be paid to the areas of stress in the marital relationship in the past and the reasons that led to the separation. The reunited couple should be encouraged to become involved in marriage and family counseling to support the future stability of the marital relationship and the family unit.

Bound Book

At the time of the adoptive placement, the agency must enter the following information in a bound book maintained by the agency, in accordance with Section 384(5) of the Social Services Law and 18 NYCRR 421.18(l):

- Fact of the adoptive placement
- Date of adoptive placement
- Date of the placement agreement
- Name and address of the adoptive parents
- First name of the child

In a bound book, pages are firmly attached to the book binding (not a loose-leaf style) with pre-numbered pages and no lines skipped as information is entered. These protections are in place so all information recorded in the book is permanent and it would be readily apparent if any information in the book were removed or altered. This is a reflection of the importance of the information being recorded in the book.



Note: This procedure is very important with respect to the length of time a birth parent has in which to revoke a non-judicial surrender [SSL§384(5) and 18 NYCRR 421.18(1)]. (*See Chapter 4 for more information.*)

Contacts and Supervision

The caseworker must contact the adoptive parents within five working days after adoptive placement of the child. An assessment of the new family unit should be made, and the caseworker should ascertain whether there are any issues that should be addressed. Any service needs should be promptly met after this first visit. The supervision assessment process, required by law, involves individual and group interviews to support the mutual adjustment of the child and family, to enable the agency to stay informed on the progress and well-being of the child in the adoptive home, and to help the family and child obtain needed services. Support should be provided to the family through meetings with other adoptive families.

Supervision begins on the date a child is placed in the adoptive home and concludes on the date of the adoption decree. Supervision agreements can be arranged between agencies, so that the agency that placed the child is not doing the direct

supervisory visits with the family, although that agency remains responsible for making sure the supervision occurs, and is completed in accordance with all requirements. Such agreements can be especially helpful when the child is placed with a family at a distance from the caseworker's office. Some local departments of social services have agreements with other departments to provide supervision for one another when placements cross county borders. If a child from New York State is placed out of state, supervision of the adoption placement is done through the Interstate Compact on the Placement of Children (*see Chapter 11*). Similarly, local district caseworkers within New York State may be assigned supervision of an adoptive placement of a child from out of state who is placed with a family residing in the caseworker's county of employment.

Frequency and Purposes of Supervisory Casework Contacts

For children in the custody of the local commissioner of social services, the supervisory contact requirements by the caseworker with the child and the pre-adoptive parents are the same as the requirements for casework contacts with caretakers and children prior to the adoptive placement, since the child is still considered to be in foster care during this time period. Casework contact requirements for children in foster care are contained in regulation (18 NYCRR 441.21) and are summarized below. Caseworkers must document the supervisory contacts made with the child and the adoptive family in the case record progress notes, including services provided, visits, interviews, and other relevant information.

Casework contacts with the child are defined as individual or group face-to-face contacts between the child and the case manager, the case planner, or the caseworker assigned to the child, as directed by the case planner. The purpose of the contacts is to assess the child's current safety and well-being, to evaluate or reevaluate 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 toward the reason(s) why such child is in foster care.

As children in pre-adoptive placements have almost always been in foster care for more than 30 days, casework contacts are required at a minimum of once a month with the child. At least two of the monthly contacts must take place within 90 days of each other in the pre-adoptive home. However, if the youth is age 18 or older and is attending an educational or vocational program 50 miles or more outside the local social services district, the casework contacts may be made by telephone or mail.

Casework contacts with the pre-adoptive parents (child's caretakers) are defined as face-to-face contacts by the case manager, the case planner, or the caseworker assigned to the child, as directed by the case planner with those persons immediately responsible for the child's day-to-day care for the purpose of obtaining information as to the child's adjustment to foster care and for facilitating the caretaker's role in achieving the desired course of action specified in the child and family services plan.

For children who have been in foster care for more than 30 days before their adoptive placement, casework contacts must be held with the child's caretaker at least monthly, and at least one of the monthly contacts every 90 days must be held in the pre-adoptive home.

The child must be placed in an adoptive home for a minimum of three months before the adoption can be finalized unless the judge or surrogate dispenses with the period of residence and indicates in the order the reason for such action. When foster parents who have cared for the child for a period in excess of three months are adopting the child, this period satisfies the required period of residence. [DRL 112 (6); SSL 372-b(1)(b); 18 NYCRR 421.8(h)(2)(i); 18 NYCRR 421.18(i)]

Medical Records

The fears and uncertainties about the child's biological background and its impact on the child's health and development represents an area that is of considerable concern to some prospective adoptive parent(s), including those adopting a child whose growth and development is at an early stage and those adopting an older child with medical or behavioral problems. There is often a concern that factors unknown to the adoptive parents could harm or impact on the child's health and development.

To the extent available, the authorized agency must provide the prospective adoptive parents with the medical and psychological histories of the child as well as that of the birth parents, with any identifying information eliminated. [SSL §373-a; 18 NYCRR 421.18(m)]

Information about the Adoption and Medical Information Registry should be given to the adoptive parents. The Registry is operated by the NYS Department of Health (DOH) and includes an option for birth parents to submit medical information to the Registry at any time after the adoption. Adoptive parents and adult adoptees may inquire and request subsequent information if it is on file. The implications of the medical history and any likelihood of hereditary complications should be discussed.

See the following link for more information about the Adoption Information Registry: http://www.health.state.ny.us/vital_records/adoption.htm.

Foster Care Payments

If the child is being adopted by the foster parent(s) who cared for the child before the adoption placement agreement is signed, the monthly payments must be paid to the prospective adoptive parent(s) as foster care payments until the date of the court order finalizing the adoption. After that date, the monthly payments are made as adoption subsidy payments if the child qualifies as handicapped or hard to place.

If the child is being adopted by foster parent(s) other than the foster parent(s) with whom the child previously lived, and the child is eligible for adoption subsidy, the monthly payments must initially be made as a foster care payment, starting from the date of placement for adoption until the date of the court order finalizing the adoption. However, if the placement of the child in the foster home results in a violation of the sections of law and regulation that limit the number of children who may be placed in a foster home, the payment must be made as an adoption subsidy starting on the date the child is placed in the home for adoption (meaning that the adoption placement agreement is signed).

In a situation where placement of a child(ren) for adoption would present a foster home capacity issue, the regulatory amendment eliminates the requirement that the

caregiver(s) be certified or approved as foster parent(s) and requires that such person(s) satisfy the standards for an approved adoptive parent(s). [18 NYCRR 421.24(c)(2)]

If a child who is in the guardianship and custody or care and custody of a social services district and is otherwise eligible for an adoption subsidy, is being adopted by approved adoptive parent(s) who are not also a certified or approved foster parent(s), the monthly payment must be made as an adoption subsidy payment from the date of placement with the approved adoptive parent(s). [18 NYCRR 421.24(c)(2)(ii)]

If the child being adopted is in the custody of a voluntary authorized agency and not a local social services district and is eligible for adoption subsidy, the monthly adoption subsidy payments will be made by OCFS to the prospective adoptive parents from the date that OCFS approves the subsidy application if:

- the home study has been completed and approved; and
- a placement agreement has been signed and the child has been placed in the home.

This provision allows access to medical benefits for children eligible for adoption subsidies until the adoption is final and adoptive parent assumes legal custody. [18 NYCRR 421.24(c)(2)]

3. Federal Adoption Income Tax Credit

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 requires that states inform adoptive parents and applicants of the availability of an adoption tax credit. To comply with this federal requirement, OCFS requires agencies to include information regarding the adoption tax credit available to many adoptive parents in their training orientation programs for all families considering adoption. Agencies may decide how best to incorporate this information in their orientation programs but are advised not to provide detailed tax credit information to applicants, given that the income limits and tax credit amounts change each year. Rather, agencies are advised to refer families to tax professionals who can determine if they are eligible and instruct them on the process for filing for the tax credit, if appropriate.

OCFS developed a sample notice that can be used as a model for the required notification, which is Attachment A to the Administrative Directive (10-OCFS-ADM-06) listed in “Resources” below.

Upon adoptive placement, the caseworker should remind the adoptive parent about the availability of a federal tax credit available to many adoptive parents, which was discussed with adoptive applicants during initial orientation sessions. In addition, information on the availability of an adoption tax credit is included in the Adoption Subsidy Agreement Summary and the OCFS website (see link below in Resources). Adoptive parents may be eligible to take this tax credit for qualifying expenses paid to adopt eligible children.



RESOURCES

For more information about the federal adoption income tax credit, see:

- *Notification to Prospective Adoptive Parents of the Federal Adoption Tax Credit*, issued as an Administrative Directive in 2010 (10-OCFS-ADM-06) and available at <http://ocfs.state.ny.us/main/policies/external/>
- OCFS website at www.ocfs.state.ny.us/adopt/taxcredit.asp.
- IRS website at www.irs.gov/taxtopics/tc607.html

4. Adoption Finalization

Caseworkers should make sure that prospective adoptive parents understand it is their responsibility to file the petition to adopt in the appropriate court and that it is highly recommended they hire an attorney with experience in adoption to guide them through this process. Some or all of the attorney's fees may be reimbursable to the adoptive parent as a "nonrecurring adoption expense" (see *Chapter 12*).

A valuable resource for adoptive parents is a brochure titled *What to Expect From an Adoption Attorney* (OCFS Publication 5054) is available in English, Spanish, Russian, and Arabic at <http://www.ocfs.state.ny.us/main/publications/Pub5054text.asp>. This brochure provides suggestions to the parents for finding an experienced adoption attorney and explains what a parent can expect from their attorney during the adoption process.

5. Post-Adoption Services

It is common for adoptive families to need support and services after adoption.¹¹ Adoption is not a one-time event, but rather a lifelong process. Post-adoption services can help adoptive families with a wide range of issues. OCFS regulations require that the adoptive parent(s) be provided with post adoption services, defined in regulation as counseling, training parents on how to care for children with special needs, providing clinical and consultative services, and coordinating access to community supportive services for the purpose of ensuring permanence of the placement. Post-adoption services may extend for three years from the date of the adoption decree. [18 NYCRR 421.8(h)(2)(ii)]

Because of the lifelong impact of adoption, members of adoptive families may want or need support, education, and other services as their children grow. Families of children who have experienced trauma, neglect, or institutionalization may require more intensive services. The following are some issues for which families typically seek post-adoption support:¹²

- Loss and grief
- Understanding adoption

¹¹ Child Welfare Information Gateway (2006). *Post Adoption Services*, p.1. Retrieved from www.childwelfare.gov/pubs/f_postadoption.cfm.

¹² Ibid.

- Trust and attachment
- School problems
- Post institutional issues and behaviors
- Identity formation
- Birth relative contact
- Medical concerns
- Racial issues

Adoptive families have different needs based on a number of factors, including the past histories of their children, the foster care experiences of their children, and the intensity of the children's physical, social, and emotional needs. A family's needs may change as the child develops and adoption-related issues may surface for a child at different stages of development. One study of 300 families who received post-adoption services found that the median length of time between the adoption and the family seeking services was five years. It also found that after families left services, they often returned for additional assistance at a later time.¹³

Post-adoption services are particularly critical for families whose adopted children have physical, emotional, and/or cognitive disabilities because these adoptions are at the greatest risk of disrupting.¹⁴ There has been a growing recognition that adoptive families need services to help them address their children's mental health issues and other problems. Mental health professionals relate many of the emotional problems of children in foster care to attachment and separation issues. Many children in foster care experience emotionally unresponsive or inconsistent caregiving in their early years that affects their ability to trust and attach to adults. Their separations from important adults in their lives when they enter foster care—even when these separations are necessary to protect them—may further intensify their emotional and behavioral problems. Repeated changes in caregivers while in foster care may cause additional trauma, further affecting the child's mental state. In addition, many foster children were prenatally exposed to drugs or alcohol and some have a family history of mental illness.¹⁵

It is important that the services needed by the family be identified and initiated before the adoption occurs, to the extent possible, so there is continuity of services and service providers through the adoption process and beyond. Linking adoptive families, children being adopted, and/or their siblings to support groups prior to the adoption, to provide support throughout the adoption process before and after finalization, can be critical to successful adoptions.

¹³ R. Torres & S. Merrill. (2001). *Casey Family Services Testifies About Post-Adoption Services Before House Committee*. <http://www.aecf.org/upload/publicationfiles/11-044.pdf>

¹⁴ S.L. Smith, J.A. Howard, P.C. Garnier, & S.D. Ryan. "Where are we now? A post-ASFA examination of adoption disruption," *Adoption Quarterly*, 9:4 (2006), pp. 16–44.

¹⁵ *Post-Adoption Services: Meeting the Mental Health Needs of Children Adopted from Foster Care*. North American Council on Adoptable Children. July 2007 <http://www.nacac.org/adoptalk/postadoptpaper.pdf>

Types of Post Adoption Services

Adoption practitioners realize the importance of providing post-finalization services. The ability to provide these services is limited by funding and may be accomplished in a number of informal ways. Parent support groups and ongoing parent training can be among the most effective tools to support parents in time of stress.¹⁶

Post-adoption services encompass a range of services that include information and referral, community education about adoption, education and training for adoptive parents, support groups for adopted children and for the biological children within those adoptive families, case advocacy and systems advocacy, and counseling. A study of post-adoption services provided to families in New York State found that the most frequently used services were parent support groups and parent education/training, individual child counseling, family counseling, and individual parent counseling. Additional services that were requested services include counseling, parent support groups, and mental health/guidance services.¹⁷

¹⁶ Ibid.

¹⁷ R. Avery. (April 2004). *Strengthening and Preserving Adoptive Families: A Study of TANF-Funded Post Adoption Services in New York State*. Cornell University. April 2004. <http://nysccc.org/wp-content/uploads/tanfaverypasrpt.pdf>

Chapter Eleven

Adoptions With Special Circumstances

There are several particular categories of adoptions involving children for which federal and/or state laws dictate specific steps or extraordinary requirements that must be followed. This chapter discusses placements involving Native American children, placements of children between states, intercountry adoptions, and the death of a prospective adoptive parent before the adoption is final.

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A. ADOPTIVE PLACEMENTS OF NATIVE AMERICAN CHILDREN

1. Background

In 1978, Congress passed the Indian Child Welfare Act of 1978 [P.L. 95–608] (ICWA), in response to concerns about the treatment of Native American children and families. The legislation was intended to prevent future unnecessary removals and placements of Native American children into non-Native-American homes. The underlying principle of ICWA, as expressed by Congress, is to “protect the best interests of Indian children” by supporting their cultural identity, both in foster care and in adoptive homes, and to “promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families.”

ICWA established minimum federal statutory standards for the placements of Native American children in foster or adoptive homes compatible with their culture and previous environment. ICWA also clarified a tribe’s jurisdiction over child welfare proceedings involving Native American children. To implement ICWA, New York State amended the Social Services Law (SSL Section 39) and promulgated regulations (18 NYCRR 431.18) to comply with the federal standards, including, but not limited to, standards for the removal of Native American children from their families.

Major provisions of ICWA and New York statutory and regulatory requirements, including tribal notification procedures, are available as attachments to Informational Letter 06-OCFS-INF-07, at

http://www.ocfs.state.ny.us/main/policies/external/ocfs_2006/

2. Definitions

An “Indian child” is defined in ICWA as any unmarried person who is under the age of 18 and is either (a) a member of an Indian tribe, or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

For the purposes of implementing ICWA, New York defines an “Indian child” in OCFS regulation 18 NYCRR 431.18(a)(1)(i) to mean any unmarried person who:

- (1) (a) is under the age of 18 years, or
- (b) is between the ages of 18 and 21 years, is in foster care, and is a student attending a school, college or university or regularly attending a course of vocational or technical training designed to fit him or her for gainful employment or lacks the skills or ability to live independently;

and

- (2) (a) is a member of a Native American Tribe, or
- (b) is eligible for membership in a Native American tribe; or
- (c) is the biological child of a member of a Native American tribe who resides on, or is domiciled within, the reservation of the tribe.

In New York State, an “Indian tribe” is defined as any tribe, band, nation, or other organized group or community of Native Americans recognized as eligible for the services provided to Native Americans by the federal Secretary of the Interior or by the State of New York or any other state because of their status as Native Americans.
[18 NYCRR 431.18(a)(2)]

3. ICWA Compliance

All of the forms and letters referenced in this section are available on the OCFS website at www.ocfs.state.ny.us/main/nas (Native American Services).

Compliance with ICWA is mandatory. There are specific, necessary steps that must be taken, in a specific sequence, when the caseworker has reason to believe that a child he or she is working with may be Native American. These steps, in the order they must be taken, are:

1. Identify the Native American nation/tribe.
2. Provide tribal notification.
3. Engage the child’s nation/tribe in service plan development.
4. Follow placement preferences.
5. Make active efforts to provide remedial services and rehabilitative programs.

Each of these steps is described in more detail below.

Identify Nation/Tribal Membership

If the biological child of a member of a nation/tribe who lives within the reservation of the nation/tribe, the caseworker should do the following:

- Ask the family, including the child (if age appropriate) if he or she is aware of any tribal affiliation.
- Find out if a parent or grandparent has a tribal enrollment card.
- Develop a family tree indicating the mother's and grandmother's maiden names and the names of the father and paternal grandparents.
- Contact the appropriate Tribal Office directly. The address and phone number for each New York State Indian Tribal Office is provided on the last page of the ICWA Compliance Desk Aid. Also, please see the "New York State Tribe/Nation Contacts for Native American Child Welfare Cases" listing on the OCFS website under Policy Directives from 2003 (03-OCFS-INF-08).
- The OCFS Native American Services office can provide help in identifying the tribe.

ICWA requires that, in any child custody proceeding that involves a Native American child and is initiated by the social services district pursuant to SSL §section 358-a or 384-b or Article 7 or 10 of the Family Court Act (FCA), the social services district must demonstrate to the court that, before beginning such proceeding, active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native American family and that these efforts proved unsuccessful. These efforts must involve using available resources of the child's extended family, the nation/tribe, and individual Native American caregivers. ICWA does not apply to juvenile delinquency proceedings.

The caseworker should ask the family, including the child (if age appropriate), if they know the name of their clan. Clan identification can help caseworkers identify extended family members for placement.

Systems Implications and Coding Guidelines: Once a child has been identified as a Native American child, it is necessary to identify the child as a Native American child in WMS and CONNECTIONS. When filling out the WMS Services Application, enter "04" (Native American on NYS Reservation) under the State Charge Field (SF). If any of the children in the WMS Services Case are to be tracked in CCRS (if they will be receiving protective, adoption, foster care or preventive services), enter "I" under the ethnicity column. Ethnicity information must also be entered in CONNECTIONS, where "Native American" should be checked under Person Demographics for every such child.

Provide Tribal Notification

The contents of the written notification to the nation/tribe of the child custody proceeding must include:

- the child's name, date of birth, and place of birth;
- the child's tribal affiliation, if known;

- the names of the child's parents, dates of birth of the child's parents, places of birth of the child's parents, the child's mother's maiden name;
 - a copy of the petition, complaint, or other document filed with the court to initiate the court proceeding;
 - a statement of the rights of the biological parents/custodians to intervene in the proceeding;
 - a statement of the right under federal law to court-appointed counsel; and
 - the location, mailing address, and telephone number of the court.
- [18 NYCRR 431.18 (c)]

OCFS provides model notification letters designed to aid caseworkers in completing the required information. The social services district is encouraged to adapt the model letters to its specific circumstance and use them to provide the required ICWA notifications. The letters can be found at www.ocfs.state.ny.us/main/nas, and on the OCFS CONNECTIONS Intranet site home page at <http://ocfs.state.nyenet/connect>, under the heading "News and Announcements" postings for October 13, 2006. The templates may be downloaded and individualized by the social services districts.

The social services district, in any child custody proceeding initiated by the district pursuant to SSL §384-b or FCA Article 7 or 10, is required to notify the child's parent or Native American custodian and the child's Native American nation/tribe of the pending proceeding and of their right to intervention by registered mail, with return receipt requested. The ICWA Parent/Native American Custodian Notification Letter and the ICWA Tribal Notification Letter are available at www.ocfs.state.ny.us/main/nas.

ICWA requires that in any involuntary proceeding in state court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement or the termination of parental rights for an Indian child must notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and the right of intervention by registered mail with return receipt requested. [25 USC 1912]

If the identity or location of the parent or Native American custodian and the nation/tribe cannot be determined, the notice must be sent to OCFS and the federal government by registered mail with return receipt requested. The registered letter to OCFS should be sent to the following address:

New York State Office of Children and Family Services
Native American Services
295 Main St., Suite 545
Buffalo, NY 14203

For the registered letter that must be sent to the federal government, caseworkers should use the ICWA Secretary of the Interior Notification Letter, available at www.ocfs.state.ny.us/main/nas. The mailing address is included in the model letter.

If the nation/tribe wants to intervene in the proceeding, it must notify the court using the mailing address and the telephone number of the court, as provided by the

social services district in the required written notification. Once the tribe intervenes, the district must provide the tribe with any notices or petitions it would otherwise serve on a party.

Engage Nation/Tribe in Service Plan Development

While OCFS regulation states that reasonable efforts must be made, ICWA requires that active efforts must be made to prevent the placement of a Native American child. This means that the social services district must demonstrate at the child's custody proceeding(s), that active efforts involving available resources or Native American families and tribes were made before initiating the proceeding to prevent the removal of the child from his or her home. (25 USC 1912)

Social services districts are required to make efforts to involve the child's Native American nation/tribe and, when possible, engage a qualified expert witness in the development and review of the service plan. [18 NYCRR 428.9 and 430.12(c)(2)(i)(a)(3)]

Follow Placement Preferences

OCFS regulations establish a required order of preference for foster care and adoption placement of a Native American child. In the absence of good cause to the contrary, an agency providing foster care or adoption services is required to place the child according to the established order of preference. The order of preferences for foster care placements and adoption placements are described in the desk aid and listed below.

Note: The nation/tribe may establish a different order of preference, which will take precedence. [18 NYCRR 431.18 (f)(1) and (g)(1)]

Foster Care Placement Preferences: An agency providing foster care to a Native American child, in the absence of good cause to the contrary, is required to place the child with:

- First, a member of the child's extended family;
- Second, a foster home licensed, approved or specified by the Native American child's nation/tribe and approved by the appropriate social services district;
- Third, a Native American foster home approved, licensed or certified by an agency authorized to provide foster care services;
- Fourth, an institution for children approved by a Native American tribe or operated by a Native American organization that has a program to meet the needs of the child. [18 NYCRR 431.18(f)(1)]

Adoption Placement Preferences: An agency providing adoption services to a Native American child is required, in the absence of good cause to the contrary, to place the child with:

- first, a member of the child's extended family;
- second, other members of the child's Native American tribe; or
- third, other Native American families. [18 NYCRR 431.18(g)(1)]

If the child is not placed according to the preferences, agencies must show good cause that must be based on the following:

- the request of the biological parents, or the child when the child is of sufficient age to make decisions, about where he or she should live;
- the child has extraordinary physical or emotional needs which, as attested to by a qualified expert, do not permit the child to be placed according to the preferences specified above;
- the unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria; or
- the tribe concurs with the decision not to follow the preferences.
[18NYCRR 431.18(f)(2)&(g)(2)]

Make efforts to provide remedial services and rehabilitative programs.

To promote the best interest of Native American children and the stability and security of Native American families, ICWA provides the following:

- A tribal court has exclusive jurisdiction over child welfare proceedings involving Native American children who live on the reservation. There is an exception, where such jurisdiction is otherwise vested in the state by existing federal law.
- Proceedings must be transferred from the state to the tribal court for Native American children not living on the reservation. The tribal court may decline the transfer.



Note: Federal Law 25 USC 233 gives New York courts jurisdiction in civil action and proceedings between Native Americans and between a Native American and any other person to the same extent as the courts in New York have jurisdiction in other civil actions or proceedings.
[25 USC 1911(a) and (b)]

- A tribe has the right to intervene in foster care and termination of parental rights proceedings in state courts involving Native American children.
 - The tribe and parent/Native American custodian must be given notice. If either is unknown, the notice must be provided to the Secretary of the Interior. As noted above, pursuant to OCFS regulation 18 NYCRR 431.18(c), notice must also be given to OCFS.
 - Full faith and credit must be given in court to the tribe's culture, laws, records, and customs. [25 USC 1911(c)&(d); 25 USC 1912(a)]
- A Native American parent in custody proceedings has the right to counsel when the court determines there is an indigent parent/custodian. [25 USC 1912 (b)]

- A higher standard of evidence is required in court proceedings involving a Native American child (*see page 11-7*). [25 USC 1912(e)&(f)]
- Minimum federal standards for foster care and adoptive placements for Native American children were established, as well as preferences for placements in those homes that reflect their culture. [25 USC 1915 (a)&(b)]
- A system is required for recording all placements of Native American children that must be made available upon the request of the U.S. Secretary of the Interior or the tribe. [25 USC 1915(e)]

Higher Standards of Evidence

The following higher standards of evidence apply in foster care and adoption proceedings involving Native American children:

- No foster care placement of a Native American child may be ordered by the court unless there is a determination, supported by clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Native American custodian is likely to result in serious emotional or physical damage to the child.
- No termination of parental rights of a Native American child may be ordered by a court unless there is a determination supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Native American custodian is likely to result in serious emotional or physical damage to the child. [25 USC 1912(e)&(f); 18 NYCRR 431.18(b) (1)&(2)]

Related Provisions of State Law

The Social Services Law includes the following provisions in relation to the foster care and adoption of Native American children:

- Permit OCFS to enter into an agreement with a Native American nation/tribe for the provision of foster care, preventive services, adoption, child protective services, and adult protective services to Native American children and families. [SSL §39 (2)]
- Authorize OCFS to reimburse the nation/tribe for the cost of services pursuant to SSL §153.
- Permit nations/tribes recognized by the state or federal government to resume jurisdiction over child custody proceedings involving Native American children, so long as the Native American nation/tribe receives approval from the federal Department of the Interior.
- Allow a Native American nation/tribe to assume exclusive jurisdiction over any child custody proceeding involving an Native American child who lives within the reservation except where state jurisdiction is otherwise vested by existing federal law. [SSL §39(3)(a)]

- Require a court in any child custody proceeding involving a Native American child not domiciled or living on the reservation, in the absence of good cause to the contrary to transfer the proceeding to the jurisdiction of the nation/tribe.
- Give the child's Native American nation/tribe the right to intervene in a court proceeding involving a Native American child. [SSL §39(7)]

Voluntary surrenders involving Native American Children

When a parent or Native American custodian voluntarily consents to a surrender of parental rights, such a surrender must be executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Native American custodian.

The court must also certify that either the parent or Native American custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Native American custodian understood. Any consent given prior to, or within 10 days after, birth of the Native American child shall not be valid. In any voluntary surrender of a Native American child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent. (25 USC 1913)

B. PLACEMENTS OF CHILDREN FOR ADOPTION BETWEEN STATES—ICPC

1. Overview

When placing a child with a prospective adoptive family in another state, the law requires that specific steps be followed. The adoptive parents or foster parents must meet the standards for certification, licensure, or approval set by the state in which they live. The Interstate Compact on the Placement of Children (ICPC or the Compact) establishes responsibility for agencies in the "sending" and "receiving" states and requires placement of the child only after the designated Compact authority (OCFS in New York State) in the receiving state has approved the placement. The Compact requires the sending party to retain jurisdiction over the child, as well as financial responsibility for the period of time the compact agreement is in place (SSL §374-a). For most adoptive ICPC cases, this jurisdiction by the sending agency usually continues until the child's adoption is finalized.

Those instances related to foster care and adoption, in which the ICPC procedures must be used, include the following:

- A child is to be placed in a pre-adoptive home in another state. (This applies to private adoptive placements as well as to those in which public or private agencies are involved.)
- A child in a foster family home or pre-adoptive home moves with the foster family or pre-adoptive family to another state. (The Compact applies here because the child is still under the legal custody of the authorized agency, even though the foster/adoptive parent has physical custody.)

- A foster child is to be placed in a foster family home in another state. The foster home must be certified or approved by the appropriate agency in the other state.



Note: The ICPC applies to other types of placements under certain circumstances, such as parent, relative, and residential.

Adoptive Placements: As indicated above, the adoptive placement of a child into or out of New York State is subject to the Compact. All 50 states are presently members of the Compact. The Office of the Compact Administrator in the state where the child is being placed must approve such a placement before the child is brought into that state. The Compact Administrator or his or her designee approves the placement by signing Form ICPC 100-A. The sending agency must provide written notice to the appropriate public authorities in the receiving state of the intention to send or bring the child into the state for placement.

2. Outgoing Interstate Compact Placements

When an agency has identified a prospective adoptive parent outside of New York State for a child in foster care in New York State, the process of getting approval for the placement outside of the state begins with the caseworker sending specific documentation to OCFS.

This documentation includes the following:

(a) Form ICPC 100-A, Interstate Compact Application, Request to Place Child (5 copies)

This form is available at <http://ocfs.state.ny.us/main/forms/adoption/>

Form ICPC 100-A is used by all states as the sending agency's formal written notice to the receiving state of its intention to make an interstate placement and a request for finding as to whether the placement would or would not be contrary to the interests of the child. The form requires the caseworker in the sending state (NYS) to complete identifying information about the child to be placed, information about the person(s) with whom the sending state proposes to place the child, as well as information about the services being requested by the sending state. These services may include a home study of the prospective adoptive home, supervision of the pre-adoptive home once the child is placed, and/or copies of supervisory reports on a monthly, quarterly or semi-annual basis from the receiving state. The sending state can include remarks that include conditions or reservations to be noted about the case. In New York State, this form is completed by the local department of social services (LDSS) or the voluntary authorized agency with whom the child is placed, depending upon local practice.

Once the receiving state completes the work requested on the case, the receiving state completes a portion of the form that indicates whether the

placement can or cannot be made. The sending state can include remarks that include conditions or reservations to be noted about the case.

(b) Additional Required Documentation (3 copies each)

In addition to five copies of the Form ICPC100-A, three copies of each of the following documents must be provided in an ICPC package:

- **Cover Letter:** Describes the case plan, why the child is in care, the reason(s) for out-of-state placement, and the services requested from the receiving state. Includes an explanation of the financial/medical plan for the child's medical needs (and educational needs, as appropriate) while in the prospective home. The caseworker includes his or her name, business address, and telephone number as the person submitting the request.
- **Court Order:** The court order must be current (not expired), include the signature of a judge, and show the child to be currently in the legal custody (and guardianship, for children freed for adoption) of the local Commissioner of Social Services (ACS or county DSS). For adoptive requests, a copy of the Termination of Parental Rights Order is also needed in addition to the current order showing jurisdiction.
- **Financial and Medical Plan:** On Form LDSS-4251, Financial and Medical Plan form, the caseworker records how the financial and medical needs of the child will be met. This form can be found at <http://ocfs.state.ny.us/main/forms/adoption/>
- **Certification of Title IV-E Eligibility for Medicaid:** The caseworker completes this form for each child who is Title IV-E eligible for foster care and adoption placement requests. This form can be found at http://ocfs.state.ny.us/main/forms/foster_care/

If the child has been in care for more than one year, the IVE redetermination form would be used and can be found at http://ocfs.state.ny.us/main/forms/foster_care/
- **Social History Summary:** The caseworker completes a detailed and specific summary describing the child's birth family, why the child is in placement, and the reasons for the interstate placement. The Summary should also include the child's present living situation, important events in the child's life, a physical description of the child, and the child's medical history.
- **Child's Social Security Card and Birth Certificate:** If available, copies of these documents should be included with the initial ICPC request. If they are not yet available, this should be indicated in the cover letter and forwarded to OCFS as soon as they are available.

Copies of completed Form ICPC100-A and the supporting documentation listed above must be mailed by the LDSS or the agency to OCFS. Each state is required to designate a Compact Administrator; in New York this function is located with the NYS Adoption Services (NYSAS) office within OCFS. ICPC packages should be sent to:

NYS Office of Children and Family Services
New York State Adoption Service- ICPC Unit
52 Washington Street
Room 323, North Building
Rensselaer, NY 12144

After reviewing the packet for completeness and entering information into the state's tracking system, OCFS will forward the complete packet regarding the child to the receiving state.

Following review and assessment by the receiving state, Form ICPC100-A is the official notification back to the sending state that the proposed placement may or may not be made. A favorable finding means that the placement can be made. A child may not be placed in an adoptive home until ICPC approval has been granted by the receiving state.

If a foster or pre-adoptive parents are relocating to another state with one or more of the children placed with them, an ICPC request can be made pursuant to Regulation 1 of the Compact. In this special circumstance, in addition to the materials listed above, a copy of the foster/adoptive home certification and most current home study is also sent to the other state. Whenever possible, this request for ICPC approval should be done at least 45 days in advance of the move. If, however, the planned move is in less than 45 days, the ICPC request materials should be sent overnight mail to OCFS with a cover letter indicating the request needs to be expedited through Regulation 1. Upon receipt of the Regulation 1 request, the other state will do an assessment of the materials in the ICPC request package, and will notify OCFS if the placement can be made pending the completion of the home study once the family relocates.



Note: New York foster home certifications or approvals are not transferable to a location in another state. The foster parent will have to secure licensure, certification or approval in the new state of residence.

After the receiving state completes the home study and returns the signed Form ICPC100-A to OCFS either approving or disapproving the placement, OCFS sends a copy of the completed form to the caseworker who requested the placement. If the placement is approved, the caseworker completes Form ICPC 100-B indicating the placement decision. If the child is being physically placed in the receiving state, the sending agency sends the form to OCFS with the placement date (either before or as soon as possible after the placement). Completion of this form notifies OCFS, which in turn notifies the receiving state, that the placement has occurred, or is occurring shortly, and that the receiving state should begin supervision of the placement. If the caseworker decides not to pursue the placement for any reason or if the case needs to be closed for any other reason, he or she should complete Form ICPC 100-B and send it to OCFS as

notification to close or withdraw the ICPC request. Also, once the adoption has been finalized, the sending agency must send OCFS a copy of Form ICPC 100-B with a copy of the Order of Adoption to close out the ICPC adoption services.

3. Incoming Interstate Compact Placements

When a child is to be placed in New York from another state, New York becomes the receiving state. OCFS/NYSAS will contact the local agency where the foster/adoptive family lives, asking the agency to complete an adoptive home study and placement recommendation. The agency would complete the home study according to NYS procedures and requirements and send it to OCFS with a recommendation either for or against placement. OCFS will make an official 100-A placement decision and send it to the sending state. In addition, the local agency may be asked to supervise the home and supervisory reports that are sent to OCFS, which will in turn send them to the sending state. If any issues come up on an ICPC case, the ICPC office at OCFS/NYSAS should be contacted.



Note: Significant revisions to the Interstate Compact on the Placement of Children were made by the American Public Human Services Association (APHSA) in the mid-2000s. States were encouraged to put forward legislation to adopt the revisions, but most of them (including New York) have not done so for a variety of reasons. Since the revised Compact does not take effect or become binding until 35 states enact the legislation, the new Compact is *not* in effect. APHSA states that the revised Compact is intended to:

- narrow the applicability of the compact to the interstate placement of children in the foster care system and children placed across state lines for adoption;
- require the development of time frames to complete the approval process;
- establish clear rulemaking authority,
- provide enforcement mechanisms;
- clarify state responsibility; and
- ensure each state's ability to purchase home studies from licensed agencies to expedite the process.

C. INTERCOUNTRY ADOPTIONS

1. Overview

The most common type of intercountry adoption in the United States is the non-public funded adoption of children (not involving a public foster child) from other countries by prospective adoptive parents living in the U.S. However, there could be occasions when a social services district places a child in foster care for adoption with

adoptive parents who live outside of the U.S. This could include, for example, a child in foster care who has relatives living in another country, or, potentially, prospective adoptive parents who learn about a freed New York child on a photolisting website.

2. Hague Convention Agreement

The process governing intercountry adoptions is called the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoptions, or “the Hague Convention.” The Hague Convention is named after the city in the Netherlands where 66 nations approved an international treaty in 1993, a first-ever agreement designed to govern the adoption process and protect children who are adopted across national boundaries. The U.S. signed the Hague Convention in 1994 and, in more recent years, legislation was passed and regulations promulgated to implement its provisions.

The Hague Convention covers adoptions between countries that become parties to it and sets out for such adoptions certain internationally agreed-upon minimum norms and procedures. Intercountry adoptive placements with Hague Convention member countries must meet all requirements of the Hague Convention. The goal of the Hague Convention is to protect the children, birth parents, and adoptive parents involved in intercountry adoptions and to prevent abuses, such as abduction, sale, or trafficking of children across country borders. To accomplish this goal, the Hague Convention adoption process generally involves six primary steps:

- 1) A Hague accredited/approved service provider is chosen.
- 2) A prospective adoptive family applies to be found eligible to adopt.
- 3) A prospective adoptive family is referred for a child.
- 4) An application is completed to determine if the child is eligible to immigrate/emigrate.
- 5) The child is adopted.
- 6) Any required visas or other travel documents are obtained for the child.

Public adoption agencies (e.g., local departments of social services, or the Administration for Children’s Services in New York City) may provide adoption services in Hague Convention cases without additional accreditation. However, nonpublic adoption service providers that provide adoption services in Hague Convention cases must be accredited, temporarily accredited, or approved, with some exceptions. This requirement is in addition to state licensing requirements for adoption programs. State requirements limiting who can place children for adoption and what fees may be charged for adoptive placements still apply. [SSL §§ 371(10), 374(2) and 374(6)]

Adoptions Into Hague Convention Countries

When a child is placed for adoption from the U.S. to another Hague Convention country, the following must be satisfied:

- 1) federal Hague Convention standards set forth in the federal Intercountry Adoption Act of 2000;

- 2) applicable federal regulations (22 CFR Parts 96 and 97); and
- 3) applicable New York State statutes and regulations, including those set forth in 18 NYCRR Part 421.

Before considering the placement of a legally freed child in New York with adoptive parents in another country, the Hague Convention requires the agency to make reasonable efforts to place the child within the U.S., except when the child would be placed with relatives living in another country, the birth parent has identified a specific prospective adoptive parent in another country, or there are other special circumstances. These efforts must include disseminating information about the child through the media, listing the child on a national or state registry (such as photolisting) for at least 60 days, responding to inquiries about adoption of the child, and providing written information about the child to prospective adoptive parents in the U.S.

Adoptions Into Non-Hague Convention Countries

Intercountry adoptions can also occur between countries that are not members of the Hague Convention. If one of the countries is not a Hague Convention country, the uniform standards set forth in the Hague Convention do not apply to the adoptive placement, even though the U.S. is a Hague Convention country.

Adoptions that take place with non-Hague countries have similar procedures, but lack the assurances of Hague Convention adoptions. When a non-Hague member country is involved in the adoption of a child from New York, state laws and regulations still apply to the adoption, as do U.S. immigration and naturalization laws and regulations and the laws of the foreign country. Because uniform controls and protections are not in place, as they would be if the placement were with a Hague-member country, OCFS will approve only adoption programs that limit placements of U.S. children to relative(s) who live in a foreign country that is not a Hague Convention member. (09-OCFS-ADM-12)

Special Considerations

Whether the adoption involves a Hague Convention country or a non-Hague Convention country, the agency must make intercountry adoption placement decisions based on the best interests of the child, as described in OCFS regulations 18 NYCRR 421.18(d). Intercountry adoptions pose unique factors that must be assessed on a case-by-case basis. Special consideration must be given to the impact on the child of living in another country, such as potential language issues, distance from other family members, cultural differences, and services available in the other country to meet the child's needs. In particular, older children may have more difficulty adjusting to a foreign country and, therefore, their opinion should be considered regarding a possible intercountry adoption.

Intercountry adoption of a New York State child must follow the same internal processes as a domestic adoption. All adoption forms and casework documentation should be completed and kept in the child's case file. This documentation includes the Application to Adopt, Adoptive Placement Agreement, and Adoption Subsidy Agreement (if applicable). There are additional reporting requirements for an outgoing intercountry adoption: the OCFS Administrative Directive, "Intercountry Adoptions (09-OCFS-ADM-12)," should be consulted for more specific information about these requirements.



Note: The above summary is a brief overview of a complex process of intercountry adoption. If a caseworker is assigned an adoption case that potentially involves another country, he or she will need to work closely with a supervisor and the agency attorney. The agency attorney is likely to seek guidance from the U.S. Department of State and/or other attorneys with knowledge of and experience with the complexity of applying the laws and policies of two countries, the Hague Convention requirements, and NYS laws and regulations.



RESOURCES

For more information about OCFS policy on intercountry adoptive placements and on the Hague Convention, see:

- *Intercountry Adoptions* (09-OCFS-ADM-12) under 2009 Policy Directives, Administrative Directives, at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/
- A summary of the provisions of the Hague Convention at www.adoption.state.gov/hague/overview.html
- A current list of the Hague Convention member countries at <http://www.adoption.state.gov/hague/agency4.php>

D. DEATH OF A PROSPECTIVE ADOPTIVE PARENT BEFORE COMPLETION OF THE ADOPTION

State legislation passed in 2008 addressed the situation in which one prospective adoptive parent dies after the adoption petition is filed, but before the adoption is legally complete. The law now allows this situation to be treated as a change in circumstances, and thus the death of one adoptive parent does not automatically require a new petition for adoption to be filed, as was the case before the legislation. The court may review this change in the circumstances to assess if the adoption is still in the best interests of the child. The agency should conduct a similar assessment for case planning purposes. (DRL §§ 113-a & 115-e)



RESOURCES

For more information, see:

- *2008 Statutory Amendments Concerning Surrenders . . . and the Impact of the Death of a Prospective Adoptive Parent Before the Completion of the Adoption* (08-OCFS-INF-12) at http://www.ocfs.state.ny.us/main/policies/external/OCFS_2008/

Chapter Twelve

Adoption Subsidy

Adoption subsidy, also known as adoption assistance, is payment to the adoptive parent(s) for the care, maintenance, and/or medical needs of a child who meets the definition of handicapped or hard to place, as defined by state law and regulations.

To help support the adoption of children with special needs at the federal level, the federal adoption assistance program was created by the U.S. Congress through the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). New York State implemented its adoption subsidy program for hard-to-place and handicapped children in 1977 [SSL §§450–458 and 18 NYCRR 421.24]. A child may receive federally-funded adoption assistance under federal Title IV-E, or a state-funded adoption subsidy (non-IV-E) based on specific eligibility criteria.

Note: For the purposes of this chapter, when referring to adoption subsidy, we mean New York’s adoption subsidy program and when referring to adoption assistance, we mean the federal Title IV-E adoption assistance program.

Funding for adoption subsidy is available through both federal and state programs, each with their own eligibility rules. Accessing federal and state funding for federal adoption assistance and/or state adoption subsidy depends on knowing specific eligibility rules for each funding category. These rules must be applied when determining eligibility for each special needs child being considered for adoption. Federal and state rules establish a hierarchy in determining eligibility for funding. Federal funding always takes priority over state and local revenue sources.

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A. TYPES OF ADOPTION ASSISTANCE/SUBSIDY

There are three components to adoption assistance, or subsidy, for which a child may be eligible. These are listed below, and discussed in more detail in this chapter:

- Adoption maintenance assistance/subsidy payments
- Medical assistance/medical subsidy
- Reimbursement to adoptive parents for one-time, nonrecurring adoption expenses

Note: The OCFS *Eligibility Manual for Child Welfare Programs* provides detailed eligibility criteria for each of the above categories (and others). Caseworkers should refer to Chapter 1B, Title IV-E Eligibility Adoption, for detailed information about the process of determining eligibility for adoption assistance/subsidy-related matters. The manual is available on the OCFS website at:

<http://www.ocfs.state.ny.us/main/publications/eligibility/>

1. Adoption Maintenance Assistance Payments

For children adopted from foster care, these monthly payments are made by the local department of social services (LDSS) [(Administration for Children's Services (ACS) in New York City)] based upon a written subsidy agreement between the local district and the adoptive parent(s) with final review and approval by OCFS. The maximum payment amount may not exceed the amount that would have been paid for maintenance if the child had remained in a foster home.

If a child in foster care is eligible for subsidy and is to be adopted by approved adoptive parents who are not also certified or approved foster parents, adoption subsidy payment begins from the date of placement with the approved adoptive parents. Until the adoption is final, medical benefits must be continued for all children placed for adoption based on the child's status as a foster child still in the custody of the local social services commissioner. [18 NYCRR 421.24(b)(2); 18 NYCRR 421.24(c)(2)(ii)]

For children in the guardianship and custody of a voluntary authorized agency, and not in foster care, payments are currently made by OCFS in accordance with a written agreement with the adoptive parent(s).

Adoption subsidy payments are available to all eligible children until the age of 21, regardless of the adoptive parent(s)' income. Payments are discontinued only when it is determined by a social services official or an OCFS official (for a child in the guardianship and custody of a voluntary authorized agency), that the adoptive parent(s) are no longer legally responsible for the support of the child or that the child is no longer receiving any support from the adoptive parent(s). The payments continue even if the adoptive family moves to another state or country (e.g. Canada, Jamaica, etc.).

Fostering Connections to Success and Increasing Adoptions Act: The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110–351), effective October 1, 2010, states that for otherwise Title IV-E eligible hard-to-place

adopted children, federal reimbursement will be available if the child had reached 16 years of age before the adoption agreement became effective and the child is:

- 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 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, documented with regular updates in the case plan of the child.

2. Medical Assistance/Medical Subsidy

Medical assistance covers some or all of the costs related to a child's specific medical condition, as well as associated therapy, rehabilitation, and special education. There are two different types of medical assistance for adopted children, based on specific eligibility criteria.

Medical Assistance for Title IV-E Eligible Children

Children who are eligible for Title IV-E adoption maintenance assistance are categorically (automatically) eligible for Medical Assistance (MA) through Medicaid.¹ The child continues to be eligible for MA under this category as long as the child continues to receive Title IV-E Adoption Assistance. In these instances, there is no review of the parents' or child's income or resources to continue MA.

Medical Assistance Under COBRA

Children who are not Title IV-E eligible but have special medical or rehabilitative needs and are eligible for state adoption subsidy may be eligible to receive MA under the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA. The following categories of children are eligible:

- children who meet the definition of hard to place and are eligible for Medicaid in the three months before the adoption agreement is signed, or those would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the Title IV-E foster care program were used (**Note:** virtually all children in foster care, with the exception of non-qualified immigrant children, are categorically Medicaid eligible and therefore fit this criteria);

¹ Throughout this chapter, MA refers to Medical Assistance through Medicaid.

- children who are handicapped or hard to place and lose Title IV-E eligibility after adoption and who are eligible for state adoption subsidy; and
- children who become eligible for a state adoption subsidy following adoption.

State Medical Subsidy

As stated above, virtually all children adopted from foster care who are non-IV-E eligible should be eligible for MA through the COBRA provisions.

However, there may be children eligible for state adoption subsidy who are not eligible for Medicaid through either Title IV-E eligibility or COBRA. If a child's birth parents are deceased and he or she is in the guardianship and custody of a social services district or a certified or approved foster parent, the child is eligible for subsidy but ineligible for MA under the COBRA provision. In this case, the social services district or voluntary authorized agency must determine if the child is eligible for State Medical Subsidy. The child must be:

- A handicapped child and ineligible for Medical Assistance under Title IV-E or COBRA or
- A hard-to-place child who is ineligible for MA under Title IV-E or COBRA and is being adopted by parent(s) age 62 or older or within five years of mandatory retirement age (very few children fall into this category).

[18 NYCRR 421.24(a)(2) and (3)]

This program provides for reimbursement for the costs of medical care, services, and supplies as may be authorized under the Medical Assistance (Medicaid) program, after any third-party health insurance has been billed. State medical subsidy is available until the adopted child reaches age 21, as long as the adoptive parent(s) continue to be responsible for and provide any support for the child.

New York's medical subsidy program does not involve a medical insurance card, nor does it include a network of participating providers similar to those provided by Medicaid or other third party health insurance companies. The social services district must make payments either directly to a provider or reimburse the adoptive parents for out-of-pocket payments for medical services for the adopted child not covered by third-party health insurance or any other source.

3. Payment for Nonrecurring Adoption Expenses

Payment for nonrecurring adoption expenses are made on a one-time basis for reasonable and necessary expenses directly related to the adoption of a child with special needs that have not been reimbursed from other sources or funds. These reimbursable expenses may include the home study fees, attorney fees, replacement of the birth certificate, and travel for visits to the child (including mileage, lodging, and meals). The maximum amount for this type of reimbursement is \$2,000 for each adoptive placement. Some expenses in excess of this amount may be tax deductible. (*See Chapter 10 for information about the adoption-related tax credit.*)

The application for nonrecurring adoption expenses is combined with the application for adoption subsidy (Form LDSS-4623A). The prospective adoptive parent(s) and the social services official must sign the agreement for nonrecurring adoption expenses before the adoption finalization. Agreements that are signed after the date the adoption becomes final are not eligible for nonrecurring adoption expenses payment. Documentation of expenses is not due at the time the signed agreement is submitted.

The adoptive parent(s) have two years from the date the adoption becomes final to submit documentation of their nonrecurring adoption expenses. For children adopted from foster care, the approved application is retained by the social services district, along with the receipts until all allowable adoption expenses being claimed are received. The local district is responsible for the review and approval of receipts for nonrecurring adoption expenses and the one-time payment to the adoptive parents and/or the adoptive parents' attorney.

The process for nonrecurring adoption expenses for children who were surrendered directly to the guardianship and custody of a voluntary agency (children not in foster care) is similar, however, the receipts for the parents and/or adoptive parents' attorneys' expenses must be sent to OCFS/NYSAS for approval and payment.



RESOURCES

For more information, see:

Changes in Adoption Subsidy: Medicaid under the Provisions of COBRA, Subsidy Eligibility, and the Review and Approval of the Subsidy Agreement. This paper was issued as an ADM in 2009 and is available on the OCFS website under Policy Directives from 2009 (09-OCFS-ADM-14).

B. PURPOSE OF AND ELIGIBILITY FOR NEW YORK STATE ADOPTION SUBSIDY

1. Reasons for Adoption Subsidy

There are children in the state's foster care system and children who have been surrendered directly to voluntary authorized agencies whose age, race, ethnic background, or handicapping condition pose a significant obstacle to their being adopted. State law provides for adoption subsidy payments to "eliminate, or in the very least substantially reduce, unnecessary and inappropriate long-term foster care situations . . ." in an effort to increase the likelihood of children with special needs finding permanent, safe homes where they can receive the love and care all children need. [SSL §450]

The vast majority of children adopted from foster care in New York State receive adoption subsidy. Of the children adopted from foster care in New York State in 2008, 96% received subsidy. Of those children who received subsidy, about 46% were considered hard to place and about 54% met the criteria for handicapped.²

² NYS Office of Children and Family Services (2008). *Monitoring and Analysis Profiles With Selected Trend Data: 2004—2008*, p. 25.

2. Eligibility for Adoption Subsidy

The availability of an adoption subsidy depends solely on the child's eligibility for the subsidy based on his or her condition or circumstances. There is no means test to determine subsidy eligibility for adoptive parents.

The following children may be eligible to receive adoption subsidy in New York State:

- under 21 years of age; and
- in the guardianship and custody of a social services official or a voluntary authorized agency, or whose guardianship and custody was transferred pursuant to a court order to a certified or approved foster parent. Guardianship and custody must have been transferred before the child's 18th birthday or may be transferred after the child's 18th birthday if the petition to terminate parental rights was filed before the child's 18th birthday; **or** care and custody was transferred to a local social services official or a voluntary authorized agency before the child's 18th birthday and the child's parents are deceased or where one parent is deceased and the other parent is not entitled to notice under §§ 111 and 111-a of DRL; and
- either be handicapped or hard to place, as defined in the SSL and OCFS regulation; and
- the adoptive parent(s) applied for adoption subsidy before the adoption is finalized. Adoption subsidy may be applied for after the finalization of the adoption when the adoptive parent(s) first become aware of a physical or emotional condition or disability **after** the adoption is final and a physician certifies that the condition existed before the adoption (pre-existing condition).

C. CRITERIA FOR HANDICAPPED AND HARD TO PLACE

1. Handicapped Child

This term refers to a child who has a specific physical, mental, or emotional condition or disability that is severe enough to constitute a significant obstacle to the child's adoption. Such conditions include, but are not limited to:

- Any medical or dental condition that requires repeated or frequent hospitalization, treatment, or follow-up care;
- or**
- A physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury, or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation [paid employment], as set forth in §§ 1002 and 4001 of the Education Law, or makes or may be expected to make a child

handicapped, as set forth in §2581 of the Public Health Law;

or

- A substantial disfigurement, such as the loss or deformation of facial features, torso, or extremities; or

or

- A diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity, or brain damage which seriously affects the child's ability to relate to his or her peers and/or authority figures, including mental retardation or developmental disability.



Note: The definition of a handicapped child is not all-inclusive since it would be impossible to include all of the possible handicaps covered by these definitions. A caseworker who has a doubt about classifying the child as handicapped should contact OCFS/NYSAS for clarification before submitting the subsidy application for approval. [SSL §451; 18 NYCRR 421.24(a)]

Required Documentation of Handicapping Condition

Applications for adoption subsidy due to a child's handicap must include documentation of the handicapping condition. This must include medical documentation that supports the child satisfying the definition of a handicapped child (if the child is a handicapped child) and must support the rate level being requested. Information about the documentation required to support handicapped subsidy applications is included in the OCFS ADM entitled *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). This ADM is available on the OCFS website at: http://ocfs.state.ny.us/main/policies/external/OCFS_2009/

A brief summary of the requirements is provided below, but caseworkers should carefully review the information provided in the ADM.

A one-page document from a physician, psychologist, psychiatrist or a qualified professional (for an application for the basic rate), that includes the diagnosis or assessment of the child's physical, mental, or emotional condition or disability that would constitute a significant obstacle to the child's adoption is considered sufficient documentation to be submitted for approval of the application for a handicapped subsidy that is at the same rate as the foster care board rate for the child before adoption. The diagnosis or assessment must meet one of the handicapped criteria outlined in 18 NYCRR 421.24(a)(2).

For conditions where OCFS regulations do not specify that a diagnosis must be from a physician, psychiatrist, or psychologist, OCFS/NYSAS will accept an assessment of a child's handicap from a "qualified professional" from selected disciplines for handicapped subsidy applications at the basic rate. A "qualified professional" includes a

NYS licensed nurse practitioner or physician's assistant, or a professional staff from the NYS Office for Persons with Developmental Disabilities (OPWDD), the NYS Office of Mental Health (OMH), or the Social Security Administration (SSA) who meets the credentials required by his or her organization to make an assessment or diagnosis of a child's condition and eligibility for services.

Presumptive Eligibility: OCFS has recently established a standard of "presumptive eligibility" to further streamline the application and review process for handicapped subsidies. This standard applies to subsidy applications for children who were previously diagnosed with a condition that is permanent or long-term, or for which no current cure is available. The documentation accompanying the subsidy application in these cases does not have to be current, meaning it can be dated more than 12 months before submitting the subsidy application. A one-page document from a physician, psychologist, psychiatrist, or qualified professional (if the rate requested is for a basic handicapped subsidy) that includes a diagnosis or description of the child's condition and an indication that the condition is permanent or considered incurable will be considered sufficient documentation to determine that the child is handicapped, irrespective of the date the assessment/diagnosis was made.

OCFS has established a list of pediatric conditions and illnesses that are considered permanent or incurable and meet the requirements for presumptive eligibility for a basic handicapped subsidy. The list is available in 09-OCFS-ADM-14, cited above in this section. However, the list is not all-inclusive and therefore when a child is diagnosed with a permanent condition that is not on the list, he or she may be eligible for subsidy if the documentation indicates that the child's condition is permanent or considered incurable. Examples of conditions on the list include, but are not limited to: total or severe deafness, permanently or legally blind, autism, cerebral palsy, HIV/AIDS, and Down Syndrome.

If the subsidy application is being made for a higher rate than the child's foster care board rate, a one-page document that includes the child's handicapping condition, the severity of the condition, and the degree or level of treatment required to care for the child is required. When a diagnosis or documentation is required for a special or exceptional request for adoption subsidy, it must be documented by a licensed physician, psychiatrist, or psychologist and must support the rate level being requested in accordance with the standards set forth in 18 NYCRR 427.6(c) and (d).

2. Hard-to-Place Child

This term refers to a child, other than a handicapped child:

- 1) who is one of a group of two siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together
and
(a) at least one of the children is five years old or older; **or**

(b) at least one of the children 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**

(c) at least one of the children is otherwise eligible for subsidy;

or

2) who is the sibling or half-sibling of a child already adopted by a family and it is considered necessary that such children are placed together pursuant to 18NYCRR 421.2(e) and 421.18(d); **and**

(a) the child to be adopted is five years old or older; **or**

(b) 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**

(c) the siblings or half-siblings already adopted are eligible for subsidy or would have been eligible for subsidy if an application had been made at the time of or before adoption;

or

3) who 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 pursuant to 18NYCRR 421.2(e) and 421.18(d);

or

4) who is eight years old or older and 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

5) who is 10 years old or older;

or

6) who is hard to place with parent(s) other than his/her present foster parent(s) because he/she has been in care with the same foster parent(s) for 12 months or more before the signing of the Adoption Placement Agreement by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in such care, and separation from them would adversely affect the child's development;

or

7) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or voluntary authorized agency (state subsidy only);

or

- 8) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or voluntary authorized agency (state subsidy only).



Note: The 12 months do not have to be consecutive months, as long as the child's absence(s) from the foster parent's home are due to: trial discharge for less than six months; placement in a residential facility or hospital for less than 90 days; or a runaway episode during which the child remained in the care and custody, or custody and guardianship, of the local social services district. (See 09-OCFS-ADM-14 for more information.)

One of the main qualifying categories under hard to place is that of sibling placement. The OCFS policy on siblings stresses the importance of keeping brothers and sisters together. In an attempt to encourage the adoption of siblings together, OCFS regulations entitle all siblings in a group to subsidy when the condition of at least one of the siblings poses a barrier to adoption.

For more information about sibling placements, see 07-OCFS-INF-04, "Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State" at: http://ocfs.state.ny.us/main/policies/external/OCFS_2007/

Another qualifying category under hard-to-place is the 12-month time frame category in which a child who has been with the same foster parent(s) for 12 months and has developed a strong attachment is eligible for subsidy. However, the freeing of a child for adoption or the signing of the Adoption Placement Agreement should not be delayed in order that the child may qualify for subsidy under the 12-month time frame. [18 NYCRR 421.24(a)(3)]

D. ADOPTION SUBSIDY RATES

The amount of the adoption maintenance subsidy payment is based on the applicable foster board rate which was paid or would have been paid for the child if he or she were in a foster boarding home. Subsidy payments are established at one of three rate categories used for foster family boarding home payments: basic, special, and exceptional. Each is described below.

1. Basic Rate

This is the lowest level of payment for children who do not meet the criteria for special or exceptional rates.

2. Special Rate

This rate is paid for children who:

- suffer from pronounced physical conditions and a physician certifies that the child requires 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 function successfully in their communities because of factors related to their status as refugees or entrants. Such factors include but are not limited to, inability to communicate effectively in English, lack of effective daily living skills and inability of the child to relate to others in the child's community;
- enter foster care directly from inpatient hospital care. These children are eligible for the special rate under this criteria for a period of one year and retain eligibility only if the child otherwise meets one of the other eligibility criteria set forth in this section; or
- in the judgment of the local social services commissioner, have a condition equivalent to those listed in the preceding bullets. A special rate for foster children who have the equivalent conditions may be approved only if:
 - a list of equivalent conditions has been developed by the local social services commissioner and approved by OCFS as eligible for special foster care services; or
 - individual, child-specific requests for special foster care services have been approved by the local social services commissioner. Such child specific requests must be approved by OCFS within 60 days after approval by the local social services commissioner.

3. Exceptional Rate

This is the highest rate level for children who:

- 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, 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 childhood 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, as

defined by the AIDS Institute of the NYS Department of Health. Foster children who have tested positive for HIV infection and subsequently tested negative for HIV infection due to seroconversion remain eligible for exceptional rate for a period of one year from the date of the test that indicated seroconversion. At the end of the one-year period, the child's condition must be evaluated and the local social services commissioner must determine the child's continued need for exceptional rate;

- in the judgment of the local social services commissioner, have a condition equivalent to those in the preceding bullets. An exceptional rate for foster children who have equivalent conditions may be approved only if:
 - a list of equivalent conditions has been developed by the LDSS commissioner and approved by OCFS as eligible for exceptional foster care services; or
 - individual, child specific requests for exceptional foster care services have been approved by the LDSS commissioner. Such child specific requests must be approved by OCFS within 60 days after approval by the LDSS commissioner.

The adoption subsidy payments must be increased by the local district whenever there is an increase in the foster care board rate and/or the clothing replacement allowance, or whenever a change in the age of the adopted child would qualify the child to receive an increased foster care rate. The amount of the payment is reduced when a young child no longer qualifies for a diaper allowance. The adjustment must be included in the subsidy payment to the adoptive parents along with notice of the adjustment. The notice constitutes an amendment to the agreement and must be attached to the agency's copy of the agreement.

Any change in the amount of the monthly payment for reasons other than an adjustment due to a change in the applicable foster care board rate must be made by an amendment to the written adoption subsidy agreement and requires the consent of the adoptive parents and the approval of OCFS. [18 NYCRR421.24 (b)(16)]



Note: Before submitting the adoption subsidy application to OCFS, the caseworker should make sure that the child is receiving the most appropriate foster care board rate to cover the level of care needed.

In determining the rate of subsidy to be paid, the local district may take into consideration the adoptive parent's income and family size. If the local district is not going to pay an amount equal to 100% of the foster care rate, the local district must choose a single method to provide maintenance subsidy increases and consistently use this method with all subsidy cases. Local districts may, at their discretion, use the income and size of the adoptive family in determining the percentage of the board rate to be paid monthly and in such cases, the amount of the monthly payment must be not less than 75% and not more than 100% of the foster care board rate. [SSL §453(1)(a); 18 NYCRR

421.24(c)(9)&(12)]

4. Applicable Board Rate

Applicable board rate means the rate in the case of:

- a child placed for adoption by a social services district, the board rate of that district or the district where the adoptive parent(s) lives, at the discretion of the placing district; or
- a child placed for adoption by a social services district and adopted by parents living outside the state, the board rate of the social services district with custody of the child; or
- a child in the guardianship and custody of the voluntary authorized agency and placed with adoptive parent(s) living in the same district, the board rate of that district; or
- a child in the guardianship and custody of the voluntary authorized agency and placed for adoption with adoptive parent(s) living in another local district, the board rate of the district in which the adoptive parent(s) live; or
- a child in the guardianship and custody of a voluntary authorized agency and placed with adoptive parent(s) living outside the state, the board rate of the district where the voluntary agency has its principal office or business.

[18 NYCRR 421.24 (a)(5); 18 NYCRR 421.24 (c)(11)]

E. FEDERAL TITLE IV-E ADOPTION ASSISTANCE REQUIREMENTS

1. Determining IV-E Eligibility

The local department of social services (ACS in New York City) is responsible for determining a foster child's eligibility for adoption subsidy and establishing whether the child is eligible for federal Title IV-E adoption assistance. Federal funding always takes priority over state and local revenue sources. Therefore, the first step in determining a child's eligibility for adoption assistance/subsidy is to determine whether the child is eligible for Title IV-E adoption assistance.

There are specific procedures that must be followed to establish Title IV-E eligibility, which are explained in detail in the OCFS *Eligibility Manual for Child Welfare Services: Title IV-E Adoption Services* (<http://www.ocfs.state.ny.us/main/publications/eligibility/>). Caseworkers should become familiar with these procedures and consult the manual as needed, since these procedures are not included in detail in this guide. It should be noted that the manual includes information and procedures related to subsidy eligibility for both Title IV-E and non-IV-E (State Subsidy), as well as Medical Assistance and Medical Subsidy]

The Title IV-E eligibility process requires that the caseworker establish relatedness to IV-E foster care, SSI, or the former ADC programs at the time of the child's removal from his or her home and in the month the adoption petition is filed.



Note: The relatedness to Title IV-E foster care is being gradually de-linked, with another age group of children added each year. By October 1, 2018, the change will apply to all children with special needs. See section below for additional information on de-linking.

The Title IV-E eligibility process is completed using forms LDSS-3912 (Adoption Assistance Eligibility Checklist) and LDSS-3912-A (Eligibility for Title IV-E Adoption Assistance for Children in the Guardianship and Custody of a Voluntary Authorized Agency). These forms are available on the OCFS website at <http://ocfs.state.ny.us/main/forms/adoption/default.asp>. Eligibility for one of these programs must be documented in the child's case record.

Children who were IV-E eligible and were adopted on or after October 1, 1997 and their adoption dissolves or their adoptive parents die, are eligible for adoption subsidy if they are placed with an authorized agency, are readopted, and are determined to have special needs. These children retain their eligibility status for purposes of adoption as long as they meet the definition of a special needs child. [SSL §§ 451, 453 & 454; 18 NYCRR 421.24]

a. Establishing Eligibility at the Time of Removal for Special Needs De-Linked Children

The Fostering Connections to Success and Increasing Adoptions Act of 2008 de-linked certain foster children's eligibility for federal adoption assistance payments from the outdated Aid to Families With Dependent Children (AFDC) income requirement as of October 1, 2009. Special needs children who reach the qualified age (see Table A) at any time before the end of the federal fiscal year and for whom an *Adoption Subsidy and Non-recurring Adoption Expenses Agreement* has been executed during that same year, are not required to be AFDC or Title IV-E eligible at the time the initial Title IV-E foster care eligibility determination is made. This also applies to:

- Any child (regardless of age) in foster care placement for 60 continuous months **and**
- Any sibling of an eligible child qualified by age (see Table A) or length of stay (60 continuous months) in foster care and who is to be placed in the same adoptive placement his/her eligible sibling.

At the initiation of adoption proceedings, a de-linked child had to be in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to:

- An involuntary removal with a judicial determination that was contrary to the welfare of the child to remain in the home **or**
- A voluntary placement agreement or voluntary surrender. For de-linked

children in placement due to a voluntary placement agreement, a Title IV-E foster care payment does not have to be made.

The applicability of the de-linking provisions for special needs children who reach the qualified age at any time before the end of the applicable federal fiscal year and for whom an *Adoption Subsidy and Non-recurring Adoption Expenses Agreement* has been executed during that same year is expanded every federal fiscal year by the child's age as follows:

TABLE A

Date	Child Reaches Age
October 1, 2009	16 year olds & older
October 1, 2010	14 year olds & older
October 1, 2011	12 year olds & older
October 1, 2012	10 year olds & older
October 1, 2013	8 year olds & older
October 1, 2014	6 year olds & older
October 1, 2016	4 year olds & older
October 1, 2017	2 year olds & older
October 1, 2018	All children

b. Establishing Continuing IV-E Eligibility for Older Youth

Effective October 1, 2010, for each Title IV-E eligible hard-to-place adopted child who had attained 16 years of age before the adoption agreement became effective, agencies must send a letter and certification form developed by OCFS, or a comparable letter and certification form, to the adoptive parents at least one month before the child's 18th birthday. The purpose of the letter and certification is to ask the adoptive parent(s) to provide the necessary information to establish continuing Title IV-E eligibility.

This procedure must be repeated for each birthday through the child's 20th birthday, as long as the adoptive parent(s) continue to be legally responsible for the support of the child; or the child is continuing to receive any support from the parent(s). A reasonable time for the return of the certification form should be indicated in the letter or on the certification form. If the form is not returned by the suggested due date, it is recommended that the form be sent a second time. If there is no response to the second inquiry, where possible a phone call is recommended. In no event should an adoption subsidy be suspended or terminated due to failure to reply; however, federal IV-E claiming must cease without the necessary documentation.

Copies of all inquiry letters, and all certifications replying to the inquiry, are to be retained as part of the adoption subsidy payment record for at least six years from issuance of the inquiry letter, and accessible for potential audit purposes.

c. Children Surrendered Directly to a Voluntary Authorized Agency

Children surrendered directly to the guardianship and custody of a voluntary authorized agency may be eligible for Title IV-E Adoption Assistance in two situations:

- when a child is SSI eligible at the time the adoption proceeding is initiated and OCFS determines that the child meets the statutory definition of special needs before finalization of the adoption; or
- in a subsequent adoption, when the child received Title IV-E Adoption Assistance in a previous adoption that dissolved or in which the adoptive parents died, if OCFS determines that the child continues to be a child with special needs. (Note: in light of the federal Fostering Connections to Success and Increasing Adoptions Act, OCFS is exploring this issue in regard to this population.)

As a result of these changes, before or at the time the adoption petition is filed, a determination of SSI eligibility must be made for a child that is handicapped to be eligible for Title IV-E adoption benefits and therefore categorically eligible for MA. Consequently, OCFS requires that in all cases where the voluntary authorized agency is submitting an application for adoption subsidy for a child that is handicapped, the agency must submit an application to the local Social Security Administration for a determination of the child's eligibility for SSI. Copies of the application or the official response/determination of eligibility from SSI must be included with the documentation submitted to OCFS with the subsidy application.

d. Eligibility When the Parent(s) are Deceased

When there is a determination that a child is in the guardianship and custody of a social services district when the parent or parents are deceased, and is eligible for maintenance subsidy but ineligible for MA under the COBRA provisions, the social services district or voluntary authorized agency must determine if the child is eligible for the state Medical Subsidy. The child must be:

- a handicapped child and ineligible for MA under Title IV-E or COBRA; **or**
- a hard-to-place child who is ineligible for MA under Title IV-E or COBRA and is being adopted by parents who are age 62 or older or within five years of mandatory retirement age.

[18 NYCRR 421.24(a)(2) and (3)]

For complete information about Title IV-E eligibility for Adoption Assistance, see Chapter One, Part B, of the Eligibility Manual for Child Welfare Services: Title IV-E Adoption Services available on the OCFS website at:

<http://www.ocfs.state.ny.us/main/publications/eligibility/Chapter%20one%20Part%20B%20Adoption%20Assistance.pdf>

F. HELPING ADOPTIVE PARENTS APPLY FOR ADOPTION SUBSIDY

1. Talking with Prospective Parents About Subsidy

During the initial orientation session with prospective adoptive parents, caseworkers should discuss the availability of adoption subsidy. The LDSS or voluntary authorized agency responsible for an adoption placement must provide information to foster parent(s) and prospective adoptive parent(s) about the adoption subsidy program; this should include an explanation of the criteria to be used to determine whether a particular child is hard to place or handicapped. Such information must be provided when prospective adoptive parents indicate an interest in adopting a particular child and to foster parents at the time that they are told that a proceeding has been started to free a foster child in their home. This information must also include the requirement for approval of the subsidy application at the local district and state levels. The caseworker should verify with the foster parents that the child(ren) are receiving the correct rate.

As early as possible, and prior to placing the child in an adoptive home or approving the foster parent(s) as adoptive parent(s) for the child, the caseworker must discuss with the prospective adoptive parent(s) or the foster parent(s) whether they will adopt the child with or without an adoption subsidy. The results of this discussion must be documented in the case record. The caseworker must also assess whether the child may be eligible for adoption subsidy and document this in the case record.

If a child does not appear to be eligible for the adoption subsidy and the prospective adoptive parent(s) or the foster parent(s) indicate an inability or unwillingness to adopt the child without subsidy, the caseworker must seek an alternative adoptive placement for the child. Efforts to locate adoptive parent(s) willing to accept the adoptive placement of the child without payment of an adoption subsidy must be documented by the caseworker.

2. Subsidy Application

At the time of an adoptive placement (whether with a foster parent or a prospective adoptive parent), the caseworker must provide the prospective adoptive parents with the subsidy application form (Adoption Subsidy Agreement) and a summary of the subsidy program (LDSS-4623A and Appendix A), including a description of the criteria for determining the child's eligibility. When a foster parent has been approved as an adoptive parent for a child in the foster parent's home and the child is not freed, the application and summary must be provided to the foster parent, where appropriate. [18 NYCRR 421.24(b)(2); 18 NYCRR 421.19(i)(3)(iii)(c)]

The caseworker must help the prospective adoptive parents in completing the adoption subsidy application as soon as possible after the adoption placement agreement is signed, or, in the case of the child being adopted by foster parent(s), as soon as action is taken to free the child. As discussed previously in this chapter, if the child is being placed for adoption with approved adoptive parents(s) who are not also certified or approved foster parent(s), the application for subsidy must be provided to the approved adoptive parent(s) before placing the child in their home because, once approved, the payment is made as an adoption subsidy payment from the date of placement of the child with the

approved adoptive parent(s).

The completed form must be signed and dated by the prospective parents after the caseworker has reviewed the form with the parents, verifying that they have read it carefully and informing them of their right to consult an attorney before signing. [18 NYCRR 421.24(b)(2)(i)(a)]

The caseworker must also give the prospective parents written notice that the signed form must be submitted as soon as possible to the local district and subsequently to OCFS before the finalization of the child's adoption. The written notice must indicate that there is one exception to this rule. An application can be made after finalization if the adoptive parents *first* become aware of a condition or disability *after* the child has been adopted, and a physician certifies that the condition or disability existed before the adoption. While this exception would authorize the availability of state adoption subsidy, it would not render the case eligible for title IV-E adoption assistance. Except where an administrative fair hearing decision determines that the decision of the local district or OCFS to deny an adoption subsidy was not appropriate, Title IV-E adoption assistance is not available for those cases when the subsidy agreement is not approved before finalization of the adoption. [SSL §453.1(a); 18 NYCRR 421.24 (b)(2)(i)]



Note: The local district has 15 working days in which to review and approve or deny a completed agreement. If approved, the caseworker then sends the agreement electronically to the OCFS/New York State Adoption Services (NYSAS). Within 30 days of receiving a completed application, OCFS/NYSAS must approve or deny it. If OCFS does not make a written decision on the application within the required 30 days of its receipt, the application is considered approved.

3. Written Subsidy Agreement

Both federal and state laws and regulations require that payments for adoption subsidies be based on a written Adoption Subsidy Agreement between the adoptive parents and the social services official. The monthly maintenance adoption subsidy and/or medical subsidy payments begin at different times, depending on the details of the case:

- In the case of a child who is in the guardianship and custody, or the care and custody, of a social services official and who is being adopted by the foster parent(s) with whom the child has lived, the payment must continue as a foster care payment until the date the court finalizes the adoption. Monthly payments for the care and maintenance of the child as an adopted child begin on the date of the court order finalizing the adoption.
- In the case of a child who is in the guardianship and custody, or the care and custody, of a social services official and who is placed with and is to be adopted by foster parent(s) other than the foster parent(s) with whom the child has lived previously, and who is eligible for an adoption subsidy payment, the payment must initially be made as a foster care payment starting from the day

of placement for adoption to the foster parent(s) with whom the child is placed. **Note:** There are some exceptions to this; caseworkers should refer to 18 NYCRR 421.24(c)(2)(ii) for a description of the exceptions.

- In the case of a child who is in the guardianship and custody, or the care and custody, of a social services official and who is freed for and placed for adoption, is otherwise eligible for adoption subsidy payments, and is to be adopted by approved adoptive parent(s) who are not also certified or approved foster parent(s), such payment must be made as an adoption subsidy payment from the date of placement with the approved adoptive parent(s).
- In the case of a child who is in the guardianship and custody of a voluntary authorized agency, is freed and placed for adoption, and is eligible for an adoption subsidy, an adoption subsidy payment is made from the date OCFS approves the subsidy agreement submitted for approval if:
 - an approved home study has been completed; and
 - a placement agreement has been signed and the child has been placed in the home.

These payments continue until the child's 21st birthday, provided that the adoptive parent(s) remain legally responsible for the support of the child and provide any support to the child. The caseworker must give the adoptive parent(s) a copy of the approved Adoption Subsidy and Nonrecurring Adoption Expenses Agreement after it has been signed by OCFS, along with Appendix A. [SSL §453(1)(a) & (d) and (2); 18 NYCRR 421.24 (b)& (c)]

The information required for the adoption subsidy agreement addresses the type of condition and subsidy for which the child is eligible and the amount of the monthly payment. The adoption subsidy agreement also specifies the circumstances under which the subsidy may be subject to change and whether such change will require a new agreement with OCFS approval or an addendum to the original agreement.

4. Post-Finalization Amendment to the Adoption Subsidy Agreement

In certain circumstances, adoptive parents may apply to amend the approved Adoption Subsidy and Nonrecurring Adoption Expenses Agreement after the adoption has been finalized. These include:

- Change in the child's condition
- Changes in the parent(s)' personal circumstances
- Fair hearing decisions
- Changes in federal and state statute that impact eligibility
- Correction of an error made on the initial application

a. Technical Amendment

A technical amendment to the adoption subsidy agreement may be requested when there is a need to change the name(s) on the original adoption subsidy agreement due to the adoptive parent(s) changing their name(s) or a transfer of guardianship or legal custody due to the death of the adoptive parent(s).

Adoptive parents may request an amendment to the original adoption subsidy agreement, after finalization of the adoption, for an increase in the subsidy payment based on the worsening of a pre-existing condition which was not known by the adoptive parents before finalization of the adoption, or the worsening of a known condition.

A request for an increase in the amount of the adoption subsidy payment must be accompanied by an amended adoption subsidy agreement, along with documentation of the child's disabilities. The documentation must show that after finalization, there was a worsening of a subsidy-eligible condition, which now qualifies the child for a higher subsidy level.

b. Subsidy Upgrade Amendments

The following are examples of cases for which an upgrade can be requested:

- Subsidy was approved for a child before finalization at a basic hard-to-place rate, but
 - after finalization, there is a worsening of a condition known to the parent(s) at the time of finalization but for which there was insufficient medical documentation. Current medical documentation now supports the rate being requested.
 - after finalization, current medical documentation establishes a pre-existing condition that was unknown to the parent(s) at the time of finalization and supports the new rate;
- Subsidy was approved for a child before finalization was at the handicapped rate, but
 - after finalization, current medical documentation confirms that the original known condition(s) has worsened; or
 - after finalization, current medical documentation confirms a pre-existing condition unknown to the parent(s) at the time of finalization, which supports the new rate being requested.

A request from the adoptive parent(s) for an adjustment to the original completed adoption subsidy agreement must be accompanied by an amended adoption subsidy agreement, not a new application. This is an important clarification related to the federal Title IV-E eligibility requirements. The original adoption subsidy agreement signed before finalization of the adoption is the official agreement, and it remains in effect for the lifetime of the subsidy. The amended adoption subsidy agreement modifies the relevant terms of the original adoption subsidy agreement to reflect the approved change in the level of the subsidy payment. To the extent not modified by the amended agreement, the original adoption subsidy agreement otherwise remains in effect. The amended agreement also

specifies when the approved increase will begin.

Federal policy³ provides that if a child was denied adoption subsidy before finalization of the adoption, or extenuating circumstances prevented the child from qualifying for adoption subsidy, the child could be reconsidered for adoption assistance if an administrative fair hearing establishes that “all of the facts relevant to the child’s eligibility were not presented at the time of the request for assistance.” The types of situations that would constitute grounds for a fair hearing include:

- relevant facts about the child, the birth family, or child’s background are known and not presented to the adoptive parents before the legalization of the adoption;
- denial of assistance based on a means test of the adoptive family;
- erroneous determination by the state that a child is ineligible for adoption assistance; and
- failure by the state agency to advise adoptive parents of availability of adoption assistance.

In such cases, the adoptive parents may request a fair hearing on a timely basis. (*See section below for more information about fair hearings for adoptive parents.*) Title IV-E is available only in those situations in which a fair hearing determines that the child was wrongfully denied benefits and the child meets all federal eligibility requirements. If the fair hearing decision results in approval of the subsidy, the subsidy must be paid to the adoptive parent based on the effective date and the amount of the subsidy specified in the written fair hearing decision.



RESOURCES

For more information, see:

- *Revised Adoption Subsidy and Nonrecurring Adoption Expenses Forms*. This paper was issued as an ADM in 2002 and is available on the OCFS website under Policy Directives from 2002 (02 OCFS-ADM-02),

G. OCFS ADOPTION SUBSIDY DATABASE AND REVIEW OF APPLICATIONS

1. Web-based Subsidy Application

OCFS/NYSAS has developed a web-based application for adoption subsidy. This system, introduced in 2010, automates the process for completing, reviewing, and submitting adoption subsidies. This database allows for electronic submission and tracking of adoption subsidies and expedites the submission and review of applications. It is anticipated that the system will significantly reduce errors, reasons for returns,

³ Policy Interpretations Questions (PIQ 92–02) entitled “Fair Hearing and Extenuating Circumstances.”

copying, and mailing costs. Social service districts and voluntary authorized agencies no longer need to submit multiple copies of applications to OCFS. The system also allows for easy tracking, storage, and retrieval of subsidy applications.

Caseworkers access the adoption subsidy database using their New York State Directory Services (NYS DS) account. Note that NYS DS accounts are referred to as Lightweight Directory Access Protocol (LDAP) accounts. This will restrict unauthorized users from accessing information maintained in the database. NYS DS accounts let agencies protect and manage access to a variety of applications. Generally, a caseworker's login ID will be the same as his or her Human Services Enterprise Network (HSEN) User ID (the ID used to log in to the network each day: e.g., "gg9999"). These accounts are not the same, however: when the caseworker changes to a new HSEN password, the caseworker is not automatically changing his or her NYS DS password.

To access the adoption subsidy database, click on either of the links below:

Internet: <https://www.ocfs.state.ny.us/nysas/>

Intranet: <http://ocfs.state.nyenet/nysas/>

2. Process for Application Submission and Review

The process of subsidy application and approval at the county level has not changed as a result of the introduction of the automated system. Rather, instead of manually sending the subsidy application with the supporting documents to OCFS/NYSAS, this information is entered into the system and transmitted to OCFS/NYSAS electronically, after the adoptive parent(s) sign the completed application.

The automated process allows caseworkers to complete the application and upload the page with the parent's signature, submit an electronic subsidy application to supervisors and, upon supervisory approval, to OCFS/NYSAS.⁴ Supporting documentation for applications can be scanned, uploaded, and submitted electronically or can be mailed to OCFS/NYSAS separately. If a caseworker does not have access to electronic scanning capability, he or she must mail one copy of the parent signature page and one copy of any supporting documentation, which must be attached to the application cover sheet.



Note: The caseworker should not mail the entire subsidy application to OCFS/NYSAS; these must be entered into the automated system.

Once the complete application is transmitted electronically to OCFS/NYSAS, OCFS has 30 days to approve or deny the application. For OCFS to approve a subsidy application, the application must include documentation verifying eligibility based on the hard-to-place or handicapped criteria (*see the list of criteria in Section C*). In cases where

⁴ OCFS regulations allow local social service districts to apply for approval from OCFS to provide final subsidy approval locally without sending subsidy applications to OCFS. However, there are currently no local districts choosing to do so.

the subsidy level requested is different from the level of foster care board rate for the child, OCFS will review the application and supporting documentation to verify that it supports both the standard for the subsidy rate level requested, whether the requested rate is higher or lower than the foster care rate.

OCFS then returns the application electronically to the caseworker indicating whether the application is approved or denied. If the adoption subsidy agreement is approved, the case information, date of approval, type of subsidy, medical coverage, and eligibility status for Title IV-E are entered into the Child Care Review Service (CCRS) database by OCFS, and the forms are returned electronically to the LDSS or the voluntary agency that submitted the application. If the application is denied, the adoptive parent has the right to request a fair hearing (*see next section*). The LDSS must send a notice of the right to request a fair hearing to the adoptive parent(s) if the child is in foster care. The notice is sent by OCFS/NYSAS if the child is in the care and custody of a voluntary authorized agency.

H. FAIR HEARING RIGHTS OF ADOPTIVE PARENTS

Social Services Law provides that any person aggrieved by the decision of a social services official not to approve a subsidy payment, or by an inadequate or inappropriate payment amount, or the failure to issue a written disapproval of the completed agreement within 30 days after the application was filed, may make a request to OCFS for a fair hearing. The request must be made within 60 days after receiving the written notice of disapproval of the subsidy or approval at a lower rate.

According to statute only the following issues may be raised at such hearings:

- whether the social services official has improperly denied an application for payments to be made, including the failure of the social services official to issue a determination of an application within 30 days of its filing;
- whether the social services official has determined the amount of payment to be made in violation of the law;
- whether the social services official has improperly discontinued payments made in the agreement; or
- whether the social services official improperly refused to certify the individual preferred by a child for certification as the representative payee or improperly denied a request by a child to revoke the certification of a representative payee.

The statute further states that OCFS must affirm the denial if:

- the child for whom payments would be made is not a handicapped or hard-to-place child; or
- there is/was another approved adoptive parent(s) who is/was willing to accept the placement of the child without payment within 60 days of such denial and placement of the child with the other parent(s) would not be contrary to the best interests of the child.

[SSL §455; 18 NYCRR 421.24(g)]

A written notice of the hearing must be sent to the prospective adoptive parent(s) and their representatives at least six working days before the scheduled date of the hearing. OCFS must render a decision within 30 days after the completion of the administrative fair hearing.

I. VERIFICATION OF CONTINUING ADOPTION SUBSIDY ELIGIBILITY AFTER FINALIZATION

As part of the written adoption subsidy agreement between the adoptive parent(s) and the local social services district, including ACS in New York City, and adoptive parents of children surrendered to voluntary authorized agencies and OCFS, the adoptive parent is required to notify the LDSS (or OCFS, in the case of children adopted after being surrendered to voluntary agencies) of any changes in the residential or dependency status of the child, including circumstances that would make them ineligible for adoption subsidy.

OCFS regulation 18 NYCRR 421.24(c)(19) requires the LDSS to send a written notice each year to the adoptive parent(s) receiving adoption subsidy reminding the parent(s) of their obligation to support the adopted child and to notify the LDSS if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. OCFS provides a Model Letter for the LDSS to use for notification to adoptive parents, and a Model Certification form for the adoptive parents to complete and return to the LDSS. These documents are included as attachments to 09-OCFS-ADM-11 (*see below*). Comparable documents may be used by the LDSS.



Note: OCFS is responsible for handling this process, including sending the annual written notice and for each step described below, for children whose guardianship and custody were surrendered directly to a voluntary authorized agency.

1. Education Certification

Adoptive parents who are receiving an adoption subsidy for a school-age child must certify one of the following:

- the child is a full-time elementary or secondary student;
- the child has completed secondary education; or
- the child is incapable of attending school on a full-time basis due to his or her medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of the certification.

If the adoptive parent indicates that the child is unable to attend school due to a medical condition, the LDSS must ask the adoptive parent for documentation of the condition by a physician, physician assistant, nurse practitioner under the supervision of a physician, or a licensed psychologist.

2. Suspension/Termination of Subsidy

It is important for caseworkers to be aware that although adoptive parents are expected to complete the certification and return it to the LDSS, the LDSS may not suspend or terminate adoption subsidy if the parent does not respond. There are very specific, narrow federal criteria under which adoption subsidy may be suspended or terminated, and they do not include failure by the adoptive parent to respond to the request for certification. If the adoptive parent does not respond to the first letter sent by the LDSS, a second letter should be sent. If there is no response to the second letter, OCFS recommends that, where possible, the LDSS place a phone call to the adoptive parent(s). However, the LDSS is not allowed to make any intensive or intrusive inquiry into the adoptive family's life.

If at any time the LDSS becomes aware that the adoptive parent(s) are no longer legally responsible for the adopted child, or that the adoptive parent(s) do not provide any support for the adopted child, the adoption subsidy payments must stop as of the date of the change of circumstances [SSL §453(1)(c)]. Examples of a change in circumstances that warrant termination of the payments include, but are not limited to: a child's marriage, death, or entry into the military, and any other circumstance whereby adoptive parent(s) are not providing any support to the child. The adoptive parent(s) must be given written notice of the termination of subsidy payments and their right to a fair hearing to challenge termination of the payments.

In a policy directive,⁵ the U.S. Department of Health and Human Services (DHHS) provided the following response to the question **“When is a parent considered to be no longer legally responsible for the support or not providing any support for the child?”**

Answer: A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. “Any support” includes various forms of financial support. The state may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support.

Consequently, termination of adoption subsidy may not occur if the parent remains legally responsible or is providing any support for the child.

Adoption subsidy is not suspended or terminated if the adopted child returns to foster care. Subsidy must continue as long as the parent is legally responsible for the support of the child and provides any support. OCFS regulations (18 NYCRR Part 422) reflect the requirement that adoptive parents are not categorically exempted from the obligation to contribute toward the support of their child in foster care. Therefore, if a child receiving adoption subsidy re-enters foster care, the social services district must make a case-by-case evaluation to determine the appropriateness of a referral to the child support enforcement unit.

⁵ ACYF-CB-PIQ-98-02.



RESOURCES

For more information about the suspension or termination of an adoption subsidy, see:

- *Adoption Subsidy and Education Requirements for Adopted Children.* This paper was issued as an ADM in 2009 and is available on the OCFS website under Policy Directives from 2009 (09-OCFS-ADM-11).

J. SUBSIDY ACROSS STATE LINES

Federal law⁶ requires that states protect the interests of children receiving Title IV-E adoption assistance who move to another state. It requires that the state where the IV-E eligible child and his or her family live, rather than the state of origin, provide the child with Medical Assistance through Medicaid (MA). In addition, federal law requires states to provide health insurance coverage for children with special needs receiving state-funded adoption subsidy. Therefore, close coordination among states is essential to serve children receiving adoption assistance for interstate cases. [18 NYCRR 426.9] The process for facilitating this is the Interstate Compact on Adoption and Medical Assistance (ICAMA), which is discussed below.

A NYS child that is handicapped or hard to place who is adopted by a resident of another state may be eligible for adoption subsidy, based on the same criteria used for children adopted in-state. Also, a child adopted with subsidy in New York State may move with his or her adoptive parents to another state, and the adoption subsidy is continued in accordance with the adoption subsidy agreement.

1. Medical Assistance

The state in which the child lives is responsible for providing Medical Assistance to the child, even when another state is providing the Title IV-E Adoption Assistance payments. Therefore, social services districts are not responsible for providing MA to Title IV-E eligible children if the children live outside New York State. Similarly, however, local districts in New York State must provide MA to Title IV-E eligible children from other states who live within their district and on whose behalf the adoptive parents have applied.

If the adoptive parents have difficulty obtaining medical coverage for the child in their new state of residence, they have the right to request a fair hearing in that state. OFCS regulations provide that if the request for a fair hearing is timely (at least 10 days before the date of discontinuing Medical Assistance), the medical payment will be continued until the fair hearing decision is issued in the new state.

The social services district responsible for the adoption subsidy/adoption assistance payment is still responsible for the annual review to verify continuing eligibility for adoption subsidy when the adoptive family lives out-of-state. If during such

⁶ The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

a review it is determined that the adoptive parents are no longer legally responsible for the child, or are no longer providing any financial support for the child, the district must notify the adoptive parents' state of residence that the child is no longer automatically eligible for medical assistance and adoption subsidy/adoption maintenance payments must cease. [SSL §453(1)(a)&(c)&(3); 18 NYCRR 421.24(c)(5)&(11)]

2. Interstate Compact on Adoption and Medical Assistance (ICAMA)

ICAMA is the mechanism used to coordinate health care in interstate adoption cases. ICAMA provides specific guidelines to states when arranging benefits and services for both Title IV-E eligible and non-eligible Title IV-E children who are receiving federal Adoption Assistance or state adoption subsidy and moving into or out of New York State. ICAMA is different from, and not connected in any way to, the ICPC. New York State is an associate member of ICAMA, along with 50 other states/territories that are full or associate members.

Before New York State's membership in ICAMA, under federal law, only Title IV-E or COBRA-eligible adopted children who moved into NYS were entitled to have Medicaid authorized. Through ICAMA, NYS now participates in reciprocal agreements with many, but not all states, to authorize Medicaid for non-IV-E eligible children moving into NYS who are eligible for Medicaid under the COBRA provisions. Therefore, social services districts in NYS must now authorize Medicaid for such adopted children. Adoptive parents complete a Medicaid application with sufficient information to establish a case (i.e., name, date of birth, social security number, and address). Cases must be renewed annually without a financial determination unless OCFS/NYSAS informs the Medicaid program that the adopted child's status has changed.

For children living in NYS with an adoption subsidy/assistance agreement from another state, if the adopted child loses Title IV-E eligibility for adoption assistance or eligibility for Medicaid under COBRA, then a full Medicaid eligibility determination must be done based on the individual's current circumstances. Continuous coverage provisions apply.

There are specific procedures and forms that caseworkers must use to initiate the ICAMA process, which is coordinated in New York State by OCFS/NYSAS. These are described, in detail, in an OCFS Information Letter titled *Interstate Compact on Adoption and Medical Assistance (ICAMA)* (08-OCFS-INF-06). Caseworkers working with adoptive families planning to move into or out of New York State should refer to the INF and follow the specified process, OCFS/NYSAS is the coordinating body within New York State for ICAMA and can provide assistance to caseworkers if needed. Caseworkers needing help with this process should contact OCFS/NYSAS at

NYS ICAMA Compact Administrator
New York State Office of Children and Family Services
52 Washington Street

Room 323 North Building
Rensselaer, NY 12144
Telephone: (518) 474-9406

K. ADOPTION SUBSIDY UNDER SPECIAL CIRCUMSTANCES

1. Subsidy for Youth Freed for Adoption After Their 18th Birthday

As a result of advocacy for the adoption of older youth in recent years, state law allows adoption subsidy eligibility for youth freed for adoption after age 18 under specific circumstances (Chapter 469 of the Laws of 2007).

The definition of a “child” for adoption subsidy purposes is:

- a youth who is between the ages of 18 and 21; and
- the petition to free the youth was filed before his or her 18th birthday; and
- an order granting guardianship and custody of the youth was issued to a social services district, voluntary authorized agency, or foster parent and the youth consented to this transfer after his or her 18th birthday.



RESOURCES

For more information about the subsidy for youth freed for adoption after their 18th birthday, see:

- *Changes in Adoption Subsidy: Medicaid under the Provisions of COBRA, Subsidy Eligibility, and the Review and Approval of the Subsidy Agreement.* This paper was issued as an ADM in 2009 and is available on the OCFS website under Policy Directives from 2009 (09-OCFS-ADM-14)..

2. Subsidy Upon the Death of the Adoptive Parents

a. Youth between the ages of 18 and 21 when adoptive parent(s) die

Upon notification of the death of the sole or surviving adoptive parent who was receiving adoption subsidy payments on behalf of the child who is over the age of 18, the social services district responsible for the adoption subsidy payment must notify the child of the procedures for continuing adoption subsidy and the child’s right to be involved in the process. The child would no longer be eligible for Title IV-E adoption assistance and the subsidy must be changed to a state adoption subsidy.

If the adoptive parents with whom an adoption subsidy agreement was in place die after the youth’s 18th birthday but before the youth turns 21, subsidy payments must continued to be made to:

- a legal guardian: preferably a relative or other adult who has a relationship with the youth, is willing to take on the responsibility for the youth, and the

youth consents to the appointment of the legal guardian; or

- the adopted youth: if there is no person to serve as the legal guardian or the courts will not appoint a youth over 18 a legal guardian, or the youth does not consent to the appointment of a guardian, and the social services district determines that the youth “demonstrates the ability to manage such direct payments”; or
- a representative payee designated by the social services district: when there is no legal guardian and the youth does not demonstrate the ability to manage direct subsidy payments, with instructions to the representative payee that the payments must be used strictly for the adopted youth.
- The social services district selects the representative payee and may select:
 - an employee of the social services district (when there is no conflict of interest);
 - an employee of the social services district where the youth lives, if it is different than the social services district responsible for making the payments;
 - a voluntary authorized agency with a previous history with the youth when the social services district does not have sufficient or appropriate staff to serve as the payee; or
 - an individual other than an employee of a social services district or a voluntary authorized agency.



Note: There is a specific process that must be followed by the social services district in identifying such an individual. For information about this process, caseworkers should consult the ADM entitled *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).

[SSL §453(1)(e)-(g)].



RESOURCES

For more information, see:

- *State Adoption, Termination of Parental Rights, and Surrender Legislation*: This ADM was issued by OCFS in 2006 and is available on the OCFS website under Policy Directives from 2006 (06-OCFS-ADM-07).

b. Child under the age of 18 when the adoptive parent(s) die

When the sole or surviving adoptive parent with whom an adoption subsidy agreement was made dies before the adoptive child reaches the age of 18, maintenance subsidy payments will be continued to the court-appointed legal guardian or custodian of the child until the child reaches the age of 21. However, the child would no longer be eligible for Title IV-E adoption assistance, and the subsidy must be changed to a state adoption subsidy. [SSL §453(1)(a)]

For medical assistance coverage, a determination of continued eligibility must be made by the social services district to decide whether these payments can continue, which involves verifying that the child is no longer IV-E eligible. If the child is handicapped, medical assistance may continue. [18 NYCRR 421.24(e)(4)(i-iii)]

When a child is ineligible for medical assistance, medical subsidy payments can be made on behalf of an adopted child to the guardian or custodian if, before the death of the adoptive parents, the child was eligible and the adoptive parents received Title IV-E adoption assistance payments, or if the child was not Title IV-E eligible but had been eligible for a medical subsidy at the time the adoption placement agreement was signed. [SSL §454.5]

Chapter Thirteen

Adoption-Related Systems Support Overview

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A. CONNECTIONS

There are several adoption-related activities, described below, that must be completed in CONNECTIONS. CONNECTIONS does not support adoption subsidy at this time.

1. Child Case Record

When a child is legally freed for adoption, information about him or her must be maintained in a stage separate from the existing Family Services Stage (FSS). The Child Case Record (CCR) is an individual stage, created to document casework activities and services for each legally freed child. **A separate CCR must be created for each legally freed child in a family.**

For instructions on completing this work, please reference the CONNECTIONS Tip Sheet (Chapter 13, Appendix A of this guide) or on the OCFS Intranet at: <http://ocfs.state.nyenet/connect/jobaides/Tip%20sheets/Creating%20a%20CCR%20for%20a%20freed%20child.pdf>.

2. Closing Adoption Cases Guide

Once the child is adopted, he or she is no longer in foster care and the child's Child Case Record (CCR) must be must be closed in CONNECTIONS. The Tip Sheet explains the steps for closing such a case, which has unique steps and requirements.

For instructions on completing this work, please reference "Closing Adoption Cases Guide," Appendix B of this chapter or on the OCFS Intranet at: <http://ocfs.state.nyenet/connect/jobaides/Closing%20adoption%20cases%20rev%201-21-09.pdf>

3. AFCARS for Finalized Adoptions

For instructions on completing Adoption and Foster Care Analysis and Reporting System (AFCARS) information for finalized adoption cases, see Section 4 of the Tip Sheet (Appendix A). All data are required for a finalized adoption.

<http://ocfs.state.nyenet/connect/jobaides/Tip%20sheets/Recording%20AFCARS%20Data%20v4.pdf>

The complete AFCARS Job Aid is available on the OCFS Intranet at:

http://ocfs.state.nyenet/connect/jobaides/JA%20AFCARS%20Job%20Aid%20v1%200%203_3_08.pdf

B. CHILD CARE REVIEW SERVICE (CCRS)

There are references throughout this guide to instances when adoption-related coding must be entered into the Child Care Review Service (CCRS) system. See the CCRS Coding Guide (Chapter 8, Appendix) and the CCRS Desk Aid (Chapter 13, Appendix C) for help with these tasks.

Once a child is adopted, the case must be closed in CCRS. The CCRS Tip Sheet (Appendix A) provides instructions, or view this link on the OCFS Intranet:

<http://ocfs.state.nyenet/connect/jobaides/Tip%20sheets/Closing%20adoption%20cases%20rev%201-21-09>

Follow these steps to close a case in CCRS:

- 1) Make certain that appropriate Placement, Legal and Adoptions codes have been entered;
- 2) Make certain that the discharge activity codes are entered in CCRS within 60 days of the date of the discharge;
- 3) Verify that New York State Adoption Services (NYSAS) photolisting and subsidy related adoption activity codes have been entered; and
- 4) Double-check that when the case was closed in WMS (see below), the system generated a correct closing code in CCRS. If there was any difficulty with the system-generated process, the caseworker will need to manually enter the closing code in CCRS.

C. WELFARE MANAGEMENT SYSTEM (WMS)

When a child is adopted, the child welfare case in the Welfare Management System (WMS) must be closed. The caseworker should end-date the POS lines as of the date of the adoption finalization and, once the CONNECTIONS case is closed, close the WMS case that was linked to the CCR with a reason code of 573 (subsidy) or 574 (no subsidy).

If an adoption subsidy is to be paid, the caseworker must open a subsidy case in the Welfare Management System (WMS). This will be a non-child welfare case that is in

the child's adopted name. The child must be assigned a new CIN. The child's original Social Security number (SSN) is **not** entered into this system; there is coding to show that an SSN has been applied for. If the child is given a new SSN after the adoption is finalized, it may be entered in WMS.

Important: A CIN consolidation should never be completed to consolidate an adopted child's new CIN with the original (pre-adoptive) CIN.

If the child is eligible for Adoption Subsidy Medicaid, a new Medicaid case must be opened in WMS using the child's new CIN number and entering the code to reflect that a SSN has been applied for. The child's original SSN is **not** entered into WMS, as this could create a link to the adopted child's birth family and/or pre-adoptive case. Adoption staff should work with Medicaid staff so that the adopted child's new SSN is obtained and entered into the Adoption Subsidy Medicaid case.

D. ADOPTION ALBUM

OCFS's redesigned and automated *The Adoption Album – Our Children, Our Families* ("The Adoption Album") includes an online photolisting process. The Adoption Album also includes the Family Adoption Registry and the online process for matching and searching for photolisted children and prospective adoptive families. *The Adoption Album Training Manual* is available to guide caseworkers through the details of each of these processes, including photolisting. This manual is available from OCFS at:

Intranet: http://ocfs.state.nyenet/adopt/AdoptionAlbumTrainingManual_Oct08.pdf

Internet: <http://www.ocfs.state.ny.us/adopt/assets/AdoptionAlbumTrainingManual>

See Chapter 8, Section B.3, for more information on the Adoption Album.

E. AUTOMATED SUBSIDY APPLICATION

OCFS/NYSAS has developed a web-based application for adoption subsidy. This system, introduced in 2010, automates the process for completing, reviewing, and submitting adoption subsidies. This database allows for electronic submission and tracking of adoption subsidies and expedites the submission and review of applications. It is anticipated that the system will significantly reduce errors, reasons for returns, copying, and mailing costs. Social service districts and voluntary authorized agencies no longer need to submit multiple copies of applications to OCFS. The system also allows for easy tracking, storage, and retrieval of subsidy applications. The automated subsidy application can be found at:

Intranet: <http://ocfs.state.nyenet/nysas/>

Internet: <https://www.ocfs.state.ny.us/nysas/>

See Chapter 12, Section G, for more information on the automated subsidy application.

Glossary

Certain terms are defined in this Glossary by statutory or regulatory language. Citations for the statute or regulation appear in parentheses or brackets. Abbreviations are as follows:

- FCA – Family Court Act
- PL – Public Law
- SSL – Social Services Law
- NYCRR – New York State Codes, Rules and Regulations
- NYS DRL – New York State Domestic Relations Law

Abandonment — A child is “abandoned” by his or her parent if such parent evinces (shows) intent to forego his or her parental rights and obligations. Such intent is manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. [FCA §1012; SSL §384-b(5)]

Abused Child — A child less than 18 years of age whose parent or other person legally responsible for his or her care, as cited in FCA §1012(e):

- (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- (ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- (iii) commits, or allows to be committed, an act of sexual abuse against such child as defined in the penal law.

Adoption — The legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person. (NYS DRL, §110)

Adoption Album Photolisting – online service that allows prospective adoptive parents to view and search a database of children legally freed for adoption.

Adoption Assistance and Child Welfare Act of 1980 — Federal law that established foster care as a temporary service. Family involvement, prevention of foster care placement, assessment, planning, and permanency became core elements of child welfare practice. (PL 96–272)

Adoption and Safe Families Act of 1997 (ASFA) — Federal law that emphasized the health and safety of children as the paramount concern that must guide all child welfare services. ASFA set the time limits within which children in foster care should be placed with permanent families and enacted a system of accountability for child welfare services. (PL 105-89)

Adoption Information Registry — Registry maintained by the New York State Department of Health (DOH) that allows a person age 18 and over who was born and adopted in New York State, birth parent(s), and adult biological sibling(s) of an adult adoptee to receive non-identifying information or identifying information (with corresponding registration and mutual consents from the parties).

Adoption Planning — A procedure begun by an agency for a child once the guardianship and custody of the child has been transferred from the birth parents to the agency. This process includes identifying the needs of the child, selecting a potential adoptive family, completing a home study of that family, beginning the placement process, supervising the placement, and finalizing the adoption. Such planning may be going on at the same time as planning to return the child home (see *Concurrent Planning*).

Adoption Subsidy — A monthly payment made to adoptive parents who have adopted a child who meets New York State eligibility standards as either a handicapped or hard-to-place child (see also *Handicapped Child* and *Hard-to-place Child*). This financial assistance generally begins after the finalization of the adoption (but may begin before finalization for adoptive parents who were not the child’s foster parents, or otherwise certified or approved as foster parents) and continues until the child reaches the age of 21, as long as the adoptive parent continues to provide any support for the child and remains legally responsible to support the child. The amount can vary from case to case and is calculated based on a formula approved by New York State and the specific county. (SSL § 453)

Adult Permanency Resource — 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)]

Another Planned Living Arrangement (APLA) — (formerly known as Independent Living) A permanency planning goal 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. [18 NYCRR 430.12(f)]

Approved Foster Home — A home that has received approval to provide foster care for a *specific* child by a relative within the second or third degree to the parent(s) or stepparent(s) of the child after an agency home study finds that the home has met approval requirements. [18 NYCRR 443.1(f)]

Best Interests of the Child — The best possible decision from the available options for the child – taking into account his or her physical, psychological, cognitive, and emotional needs. This term, undefined in statute, is used by Family Court, particularly in justifying child removals [also called “contrary to the (child’s) welfare” (CTW)] and by agencies in bringing a petition to terminate parental rights.

Birth Family — The family to whom the child was born. The birth family is the child’s biological family.

Case Plan — A description of the specific steps that will be carried out to address the reasons for the child’s placement, based on the information the agency has gathered about a family. The case plan describes: 1) what the birth parents will do to develop strengths and meet needs; 2) what the caseworker will do to help the birth parents and child; 3) what others, including foster parents, will do to help the birth parents and child; and 4) when the case plan’s goals will be met. This includes planning for services to meet the needs of the child and family.

Case Consultation — A discussion held to prepare for a permanency hearing unless a Service Plan Review will occur within 60 days of the date certain for a permanency hearing. The purpose is to assist with development of the permanency hearing report and to address case issues such as progress, status, safety, appropriateness of placement and permanency goal, service plan, and visiting plan. Participants must include the case planner/caseworker, birth parent, child age 10 and older if in the child’s best interests, and foster parent, pre-adoptive parent, or relative/other person with whom the child is placed by the court. [18 NYCRR 428.9(b)]

Certified Foster Home — A home that has received a certificate to provide foster care after an agency home study finds that the family meets the certification requirements. The certificate limits the number of children to be placed in the home and states any restrictions on child characteristics. [18 NYCRR 443.1(f)]

Concurrent Planning — Planning that works toward returning the child home while *simultaneously* developing an alternative permanency plan for the child. Concurrent planning recognizes that the parent(s) may be unable or unwilling to establish a safe environment for the child and pursues another permanent goal for the child.

Confidentiality — A basic principle and agency legal requirement for foster and adoptive parents, as well as caseworkers and others involved in providing services to a child and his or her family, to not discuss a child’s family background, personal history, problems, or special needs with anyone other than those clearly assigned professional responsibility for some aspect of a foster child’s care and supervision. These matters

cannot be discussed with the family's friends, neighbors, or other relatives who are not part of the foster parent's household unless for health and safety reasons. Confidential information includes information furnished by foster or adoptive parents, the agency, the caseworker, the child, or the child's birth family. It may concern the family background of the child, the child and family's medical history and condition, and/or the services being provided to the child.

Court Order — Written or oral directive of the court requiring a party to take a particular action or refrain from taking an action. An oral order of the court is only effective if made in open court and on the record.

Custody — Physical and legal responsibility for a child and authority to act in place of the parent, granted by the court. Examples of physical responsibility are food, shelter, and necessary transportation. A foster child is in the care and custody of the Commissioner of the local social services district. A child who is freed for adoption is also in the custody and guardianship of the Commissioner of the local district.

Date Certain — A specific day set by the court when a permanency hearing will be held, not just a general time frame such as within six months. The court must set a date certain for each initial and every subsequent permanency hearing. See also *Permanency Hearing*.

Diligent Efforts — Attempts by an agency to assist, develop, and encourage a meaningful relationship between the child and his or her parents. Examples are assessing what services the family needs, providing or arranging for those services, and making arrangements for child/parent visits.

Diligent Search — The attempt to locate a missing mother, legal or alleged father, legal guardian, or responsible relative of a child placed in foster care. The purpose is to locate and involve missing parents in the planning process or to free the child for adoption. It may be necessary to satisfy the court that adequate efforts were made to locate the parent(s) and help the court decide how to handle notifying the parents about an upcoming court proceeding.

Disruption — When foster parents decide they are unable to continue caring for a particular child (for a variety of reasons) and that child must leave their home. Disruption also occurs when the child has been placed for adoption but leaves the pre-adoptive home before finalization.

Family Assessment and Service Plan (FASP) – Documentation of assessment and service planning within specific time frames required by OCFS regulations.

Family Court — A court designated to hear matters related to family members. This court handles abuse and neglect proceedings and reviews voluntary placements, PINS (see *Person in Need of Supervision*) and JD (see *Juvenile Delinquent*) cases, termination of parental rights, child support, paternity, adoption, guardianship, custody, and family offenses.

Finalization — The final step of the adoption process. The attorney, on behalf of the adoptive parents, files the appropriate legal documents, including the adoption petition, to finalize the adoption. A court hearing is set and a pre-finalization home study is completed. After the court hearing, the custody and guardianship of the child are legally transferred to the adoptive parents.

Finding — What the court determines the facts of the case to be, based on the evidence presented.

Foster Care — Foster care of children means all activities and functions provided concerning the care of a child away from his or her home 24 hours per day in a foster family free home or a duly certified or approved foster family boarding home or a duly certified group home, agency boarding home, child care institution, health care facility, or any combination thereof. [18 NYCRR 427.2(a)]

Freed for Adoption — When a foster child's custody and guardianship are committed to an authorized agency through a surrender or a termination of parental rights proceeding based on grounds of abandonment, permanent neglect, mental illness or mental retardation, severe or repeated abuse, and death. This also includes a child whose parent or parents have died during the period in which the child was in foster care and for whom there is no surviving parent who would be entitled to notice or consent. [SSL § 383-c, 384, 384-b and FCA § 1087(b)]

Governor's Permanency Bill – Comprehensive state permanency legislation that promoted the permanency, safety and well-being of children removed from their homes through more timely and effective judicial and administrative reviews and case planning. (Chapter 3 of the Laws of 2005)

Guardianship — Physical and legal responsibility of a child granted to a person or authorized agency to act as parents by court order. Guardianship may be granted by the court when parental rights have been suspended or terminated. Generally, a person can be designated a guardian of the person, of the property, or both. A guardian of the person has the right to make decisions concerning the individual. The care, custody, and control of the individual is also usually (although not necessarily) granted to the person as well. A guardian of the property is a person who can make decisions concerning the property of the individual. (FCA §661)

Hague Convention Agreement – international treaty approved in 1993 as the “Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoptions.” It governs the adoption process and protects children who are adopted across national boundaries.

Handicapped Child — A child who possesses a specific physical, mental, or emotional condition or disability of such severity or kind which, in the opinion of the department, would constitute a significant obstacle to the child's adoption. As cited in 18 NYCRR 421.24, such conditions include, but are not limited to:

- (i) any medical or dental condition which will require repeated or frequent hospitalization, treatment or follow-up care;
- (ii) any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury, or disease, which makes or may be expected to make a child totally or partially incapacitated for education or for remunerative occupation, as described in sections 1002 and 4001 of the Education Law; or makes or may be expected to make a child handicapped, as described in section 2581 of the Public Health Law;
- (iii) any substantial disfigurement, such as the loss or deformation of facial features, torso, or extremities; or
- (iv) a diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental retardation or developmental disability.

Also see *Special Needs*.

Hard-to-place Child — As cited in 18 NYCRR 421.24(a)(3), a child, other than a handicapped child:

- (i) who has not been placed for adoption within six months from the date his or her guardianship and custody were committed to the social services official or the voluntary authorized agency; or
- (ii) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or the voluntary authorized agency; or
- (iii) who meets any of the conditions listed in clauses (a) through (f) of this subparagraph, which the department has identified as constituting a significant obstacle to a child's adoption, notwithstanding that the child has been in the guardianship and custody of the social services official or the voluntary authorized agency for less than six months:
 - (a) the child is one of a group of two siblings (including half-siblings) who are free for adoption and it is considered necessary that the group be placed together pursuant to sections 421.2(e) and 421.18(d) of this Part; and
 - 1) at least one of the children is five years old or older; or
 - 2) at least one of the children 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) at least one of the children is otherwise eligible for subsidy in accordance with the provisions of this subdivision

- (b) the child is the sibling or half-sibling of a child already adopted and it is considered necessary that such children be placed together pursuant to sections 421.2(e) and 421.18 (d) of this Part; 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;
- (c) the child 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 pursuant to sections 421.2(e) and 421.18(d) of this Part; or
- (d) the child is eight years old or older and 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
- (e) the child is 10 years old or older; or
- (f) the child is hard to place with parent(s) other than his/her present foster parent(s) because he/she has been in care with the same foster parent(s) for 18 months or more prior to the signing of the adoption placement agreement by such foster parent(s) and has developed a strong attachment to his/her foster parent(s) while in such care and separation from the foster parent(s) would adversely affect the child's development.

Also see *Special Needs*.

Home Study — The process of gathering information to determine if prospective adoptive parents can be approved to adopt a child. Agency workers (usually called homefinders) visit the home and collect detailed information about the applicants, as well as other household members and potential caregivers for the child. Background checks relating to criminal history and Statewide Central Register (SCR) of Child Abuse and Maltreatment reviews are required, as are family health exams. The worker submits a report to agency, describing the home environment, background, social history, and current makeup of the family.

Interstate Compact on the Placement of Children (ICPC) – Establishes responsibility for agencies in the “sending” and “receiving” states in an interstate adoption and requires placement of the child only after the designated Compact authority (OCFS in New York State) in the receiving state has approved the placement.

Attorney for the Child (formerly called Law Guardian) — An independent attorney appointed by Family Court and paid by the county to solely represent the child's interests. Each child in care is appointed his or her own law guardian by the court.

Life Book — A combination of a story, diary, and scrapbook that has information about a foster child's life experiences, with such items as pictures of birth family and foster families, report cards, souvenirs of special events, and medical history. Children take their Life Books with them when they are discharged from foster care.

MAPP/GPS Training — A training program for prospective and new foster/adoptive parents that teaches skills for successful foster/adoptive parenting through role playing and other group techniques. The approach encourages open communication and trust by working in partnership with birth families and caseworkers. MAPP/GPS stands for Model Approach to Partnerships in Parenting/Group Preparation and Selection.

Neglected (or Maltreated) Child — As cited in FCA §1012(f)], a child less than 18 years of age:

- (i) whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his or her care to exercise a minimum degree of care:
 - (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
 - (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; by misusing a drug or drugs; by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he or she loses self-control of his or her actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or
- (ii) who has been abandoned by his parents or other person legally responsible for his care.

No Reasonable Efforts — A finding by the court that reasonable efforts are not required or no longer required to return the child home after being placed in foster care due to certain circumstances, which are spelled out in the law. [FCA § 1039(b)] See also *Reasonable Efforts*.

Permanency Hearing — A hearing held for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district or agency. The standards for permanency hearings for abused or neglected children, children voluntarily placed in foster care, and completely freed foster children are set forth in Article 10-A of the Family Court Act. The initial hearing must be held no later than eight months after removal, and subsequent permanency hearings must be held every six months thereafter. When a child is freed for adoption at a court hearing, the initial freed child permanency hearing must be held within 30 days unless the court determines that it should be held immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given (FCA § 1089). Timing of permanency hearings differ for children placed as PINS or JDs (unless they are completely freed for adoption), but generally are held annually.

Permanency Hearing Report — A report submitted by the social services district or agency to the court and the parties prior to each permanency hearing regarding the health and well-being of the child, the reasonable efforts that have been made since the last hearing to promote permanency for the child, and the recommended permanency plan for the child. [FCA § 1087(e)] The child's current foster parents are entitled to provide input into the report and receive a copy of the report 14 days before the hearing.

Permanency Planning — Planning by agencies to protect a child's right to grow up within a permanent family. Agencies develop plans to place children in living situations that are safe, will meet their needs, and give them stability for the longest period of time.

Petition — Formal written application to the court requesting action by the court.

Placement Order — An order made by a court granting the custody of a child to an agency.

Preventive Services — Those supportive and rehabilitative services provided to children and their families for the purpose of: averting a disruption of a family which will or could result in placement of a child in foster care; enabling a child who has been placed in foster care to return to his or her family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care. [18 NYCRR 423.2(b)]

Reasonable Efforts — A finding by the court that reasonable efforts were made to prevent a child's removal from his or her home, or that reasonable efforts were made to enable a foster child to safely return home (or to finalize the child's permanency plan if it is not to return home). In both cases, the health and safety of the child are the paramount concern in determining reasonable efforts. [FCA § 1039(b)] See also *No Reasonable Efforts*.

Relatives Within the Third Degree — Relatives within the third degree are those who are related to the parent(s) or legal step-parent(s) through blood or marriage in the first, second, or third degree in the kinship line. *In relation to the child*, they are: grandparents and great-grandparents; aunts and uncles and their spouse; siblings and their spouse; first

cousins and their spouse; great-aunts and great uncles and their spouse; and great-great grandparents. In addition, a person who is unrelated to a child may be approved to be a relative foster parent to that child if the person is related to the child's half-sibling(s) and such approval will allow the half-siblings to remain together. [18 NYCRR 443.1(i)]

Recertification and Reapproval — The annual process of reviewing the certified or approved status of a foster home when the family wishes to remain eligible to care for foster children.

Self-Concept — How an individual feels about who he or she is. Children who have been sexually or physically abused or neglected often blame themselves for their families' problems. Sometimes it is hard for children who have been treated badly to feel good about who they are. Their self-concept is poor. Caseworkers, as well as foster and adoptive parents, should help children and youth understand and feel good about who they are, including their cultural, racial, and religious identities.

Service Plan Review (SPR) — A periodic formal meeting to review how each case of a child in foster care is progressing. The purpose of the case review is to address whether the family and others are taking the steps they agreed to in the service plan and whether the child will be able to live in a safe, permanent home by returning home, living with relatives, being freed for adoption, or being discharged to another planned living arrangement with a permanency resource. The review must occur between 60 to 90 days from removal (or no later than 90 days from placement for PINS and JDs) and every six months thereafter. Participants discuss progress toward the service plan and revise the plan if necessary. Participants may include the caseworker (required), supervisor, birth parent, foster parent, child (age 10 and up, or younger if able to participate), and third party reviewer (required) who is an agency staff member who is not involved with the case. [OCFS regulations 18 NYCRR 428.9 and 18 NYCRR 430.12(c)(2)]

Service Plan – See *Case Plan*.

Special Needs — A category for determining whether a child is eligible for adoption subsidy under the federal Title IV-E Adoption Assistance Program. A child with special needs is defined as a child who:

- 1) the state has determined cannot or shall not be returned to the home of his or her parents;
- 2) is handicapped or is hard to place; and
- 3) a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without adoption assistance, except where such an effort would not be in the best interests of the child. [Social Services Act §473(c)]

See also *Handicapped Child and Hard-to-Place Child*.

Strengths — The skills, resources, qualities, and experiences that are part of each person. Identifying strengths helps in understanding and appreciating others and in gaining

insight into a person's life and behaviors. Part of seeing a person's strengths lies in seeing that person in a positive light.

Surrender — A signed and notarized document transferring custody and guardianship of the child to an authorized agency official. In the case of a child in foster care, usually the child is voluntarily surrendered to the local commissioner of social services, who is empowered to consent to adoption. The parent who executes the surrender no longer has control over the child's adoption nor the right to visit or plan for the child. An exception to this is a conditional surrender, in which the birth parent designates someone who can adopt the child and/or provide contact between the birth parent and the child after the surrender and after the adoption of the child. A surrender can be judicial (executed before a judge) or extra-judicial (executed by the parent with two witnesses in the presence of a notary public).

Termination of Parental Rights (TPR) — Involuntary commitment of the guardianship and custody of a child to an authorized agency by a court proceeding. Grounds for termination of parental rights include abandonment, permanent neglect, mental illness or mental retardation of the parent, severe or repeated abuse of the child, or death. Each ground has specific statutory standards when the court may terminate parental rights. For example, in a TPR based on permanent neglect, a court determines when a child has been in foster care for one year, or the child has been in foster care for 15 of the most recent 22 months, that the parents have failed to substantially and continuously or repeatedly maintain contact with or plan for the future of the child, although physically and financially able to do so, even though the agency has made diligent efforts to encourage and strengthen the parental relationship. When a court determines that a child was severely or repeatedly abused and reasonable efforts are no longer required, a TPR petition may be filed immediately. [SSL § 384(b)]

Uniform Case Record (UCR) — A means of documenting case assessment and service planning through its various forms (e.g., progress notes, service plans, and plan amendments). The UCR provides a structure to help guide agency efforts at permanency planning and to record such efforts, thereby giving caseworkers a useful tool in working with families and children. (18 NYCRR 428)