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### **Integrating New York State Regulations into Child Protective and Permanency Practice**

It can be difficult, in the typical pace of family court practice, to remain mindful of the host of regulations which govern the agencies which work with our clients and provide clarification about the services to which our clients are entitled. Regulations, like statutes and caselaw, represent another important source of LAW governing child protective and permanency clients. Particularly in cases presenting numerous or complex service issues, reference to regulations can be helpful in the following ways:

1. The Regulations provide a means for you to better understand a particular issue and so can help you have a more informed discussion about the issue with a caseworker, judge, law assistant, adversary, etc. For example, understanding an agency's legal obligations regarding a client for whom suitable housing has not been located gives you a framework in which to ask pertinent questions and make pertinent suggestions regarding the agency's efforts in that regard;
2. The Regulations provide a means for you to develop and fine tune your case theory with respect to a critical aspect of litigation involving a client and/or short orders for that client. For example, the regulations regarding older youth in care (formerly clients with a goal of "independent living") can help you develop a case theory of what would constitute Reasonable Efforts to advance that permanency goal ("some other permanent living arrangement") and/or how the order outlining appropriate efforts and services would look;
3. The Regulations enhance and amplify statutory concepts such as "diligent efforts" and "preventive services."
4. The Regulations give you a framework in which to plan direct or cross-examination of a witness OR plan specific language in an affirmation or affidavit;
5. Regulations can be included as the legal basis for an application, made orally or in writing, as the basis for an argument in a summation or motion, or as the legal basis for an order against ACS or an agency.

For the most part, the most pertinent regulations for our child protective and permanency practice are found at **18 NYCRR 421 et. seq.**

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### Regulations Outline

Many parts of 18 NYCRR 400 et seq. govern funding, review and recording requirements for a variety of agencies providing social services. Below is an outline of the regulations found in this chapter that are most pertinent to practice in child protective and permanency proceedings—additional practice tools can be obtained by contacting CFR. 1

#### Part and/or Section

#### Noteworthy

#### **Part 407 -Consolidated Service Plan**

407.4 outlines the categories of services which should be provided by ACS directly or thru other preventive/contract agencies and can be referred to when relying on FCA 1015-a

#### **Part 420-State Adoption Service**

photo-listing and adoption registration services

#### **Part 421-Standards of Practice for Adoption Services**

421.2 --siblings or half siblings must be placed in the same adoptive home unless, pursuant to requirements in 421.8, agency can demonstrate that children remaining together is contrary to health, safety or welfare of one of the children—*see also*, 421.18

section 421.5

agency must attempt to engage out of wedlock fathers

section 421.6

conditional surrenders

section 421.8

services to children who are legally freed include: consider subsidy; provide services necessary for sibs to remain together; provide parent training to prospective adoptive parent; supervision and post

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<p>section 421.15 421.16</p>	<p>adoption services adoption home study process adoption home study criteria, including that adoptive parent expected to live to child's majority; obligations to applicant refused b/c of indicated case.</p>
<p>section 421.18</p>	<p>criteria for determining best adoptive placement for a child/children; criteria for placing siblings together; right to hearing when denied opportunity to adopt.</p>
<p>section 421.24 Adoption Subsidies</p>	<p>Sets out rates, time frames for subsidy grants, etc.; payments for non-recurring adoption expenses; fair hearings</p>
<p>421.27 Criminal History Check</p>	
<p><b>Part 423 Preventive Services</b></p>	
<p>section 423.2</p>	<p>Lays out 19 different preventive services which can be offered to: enable a child who has been placed to return at an earlier time to his/her family than would otherwise be possible; or reduce the likelihood that a child who has been discharged will return to care, or avert a disruption of a family which will or could result in placement of a child in foster care</p>
	<p>Mandated preventive services—see 430.9 Non-mandated preventive services—<i>see</i>, 423.2 (b) (1)-(15) 423.2 (b) (16) –housing services</p>
	<p>Also defined: specialized rehabilitative services and supportive services</p>
<p>section 423.4</p>	<p>Length of services, core services required; (g)(2)—minor parents in foster care are eligible for preventive services if services will assist minor parent and child to stay together; preventive services after discharge, to children also in receipt of child protective services, to adopted children; and to children in foster care;</p>

housing subsidy and other housing services defined (*see also* 423.2 and 430.9)

## **Part 424 Adoptive Parent Registry**

agencies must make inquiry here to find potential adoptive home for handicapped or hard to place child if not in adoptive home three months after being freed.

## **Part 427 Standards of Payment for Foster Care Children**

### 427.2 definitions

“Foster child” is under the age of 18 OR between 18 and 21 AND a student attending a college, university, school or vocational/technical training program OR between 18 and 21 and “lacks the skills to live independently” (*see also* 398-a of the SSL)

All types of foster care defined

### section 427.3

Agency may request reimbursement for special payments to cover: i.e., school expenses; music, art, dancing lessons; attire for special occasions; payments for travel in excess of 50 miles to visit relatives, parents or “significant others”; camp costs; nonmedical needs of a handicapped child; (Note: reimbursement would be from ACS so that order, etc. could be vs. both)

### section 427.6 Special and Exception rates

### section 427.16 Clothing for children in foster care

ACS “shall” authorize special allowances to cover the costs of clothing stolen or destroyed or for special occasions AND must assure that clothing is “clean, attractive and well fitting”

**Part 428 Standards for Uniform Case Records and Child Service Plans**

428.3

Family Assessment and Service Plans (FASP) must document the involvement of the children in foster care if 10 years of age or older, parent, siblings; also applies to children placed in direct custody of relative or other suitable person

428.6

Initial plans and reassessments must include a visiting plan for child with parents, siblings, other significant family members, potential permanency resources and/or any other persons of significance to the child

LG and parent's counsel entitled to initial risk assessments and service plans and any plan amendments within 10 days of completion...see also section 409-e of the SSL. And see 18 NYCRR section 430.2 for specific descriptions of the required components of a case record; Family Service Plans required at 30 days, 90 days 120 days after removal and every 6 months thereafter

428.9

If SPR will not be held within 60 days prior to date certain of permanency hearing, "case consultation" must be held in preparation for permanency hearing under article 10-A; case consultation can not be held sooner than 60 days prior and must be held with sufficient time to prepare and submit permanency report at least 14 days in advance; outcome of case consultation must be included in permanency report

\*\* lengthy list of items consultation should cover—can use in determining sufficiency of permanency report

**Part 430 Additional Limitations on Reimbursement for Foster Care and Preventive Services**

section 430.4

Compliance with orders under FCA 1055

section 430.5-6

“ ” “ ” SSL 384-a and  
358-a

section 430.9 -Appropriate provision of  
Mandated Preventive Services

preventive services shall be considered  
“mandated” in three different categories: to  
prevent placement; to prevent replacement;  
and to facilitate return to parent—in the *first*  
*category*, “need” can be identified as that of  
the parent OR the child

Mentions Pins cases specifically

Standards for provision of housing services  
as mandated for children with goal of  
another planned living arrangement with a  
permanency resource

section 430.10 Necessity of Placement

includes standards for activities prior to  
placement, how to determine that placement  
is necessary

section 430.11 Appropriateness of Placement

(c) continuity in child’s environment—setting  
should, when possible, permit the child to  
“retain contact” with persons, groups and  
institutions child involved with prior to  
placement.

(d) standards for appropriate levels of  
placement  
(e) court placements

section 430.12 Diligence of Effort

section specifies diligent efforts according to  
permanency goal identified for child and  
requires consistency between service needs  
and goals

section specifies efforts re: spr’s (*note,*  
*under the new permanency bill, covers all*  
*children in foster care and children placed*  
*in the custody of a relative or other suitable*  
*person pursuant to Article 10)*

(c) specifies timing of SPR’s and who may  
attend; specifically includes the LG; also  
provides that permanency hearing can take

the place of SPR if held and completed within 6 months of prior SPR

child must be included if over the age of 10 unless reason to exclude documented in case record; parent may identify/bring “any other person”

(d) where goal is reunification: Visiting requirements outlined, including “arranging for visits to occur in a location that assures privacy, safety and comfort for family members.” *See also, 431.9 and 431.14*; also provides for how visits can/can not be suspended; specifies visiting in PINS and JD cases

(e) where goal is adoption, efforts outlined;

(f) where goal is another planned permanency arrangement with a permanency resource—*new bill states the purpose of this goal is to assist youth in their transition to self-sufficiency and connect them with any needed community and/or specialized services*; also specifies how old child may be to have this goal (14) and long list of specific obligations owed the youth from the agency; defines “adult permanency resource” as “a caring committed adult who has been determined by a social services district to be an appropriate and acceptable resource for a youth and is committed to providing emotional support, advice and guidance to the youth and to assist the youth as the youth makes the transition from foster care to responsible adulthood.”

## **Part 431-Care and Protection of Children**

section 431.4 retention of earnings

section 431.7

Standards for access to and disclosure of confidential HIV related info.

Section 431.8	procedures that must be followed if child AWOLs from placement
section 431.9	How agencies are to determine when a TPR is appropriate <i>see also 430.12</i>  (d) denying or limiting parental visits  (e) 15/22 month rule
section 431.10	Placement of children who are siblings--diligent efforts required; factors to consider
section 431.14	Terminating or limiting visits by parent--court order required unless imminent risk
section 431.17	Children in OMH or OMRDD facilities
431.18	Indian (Native American) Children

### **Part 433 Child Abuse in Residential Care**

### **Part 434 Child Protective Services Administrative Hearing Procedures**

### **Part 435 Respite Care and Services for Families and Foster Families**

section 435.2	Definitions--purpose defined
section 435.3	Eligibility defined--two categories: biological families or families of origin AND foster families
section 435.4	Provision of respite care and services.
Section 435.5	Length of time--note: longer when parent in a substance abuse program
section 435.8	Crisis counseling

### **Part 443 Certification, Approval and Supervision of Foster Family Boarding Homes**

section 443.1	Definitions, including definition of relative within the second or third degree; specifies
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that a person with a “significant prior relationship to the family” even if unrelated can be certified as foster parent and entitled to emergency certification *see 443.7*

section 443.2

requirements re: providing info and recruiting people interested in being considered foster parents; fair hearing procedures if denied

(c) home study must be complete within four months generally

(d) foster parent orientation, including information re: child which must be given to foster parent

section 443.3

Standards and procedures for certifying a particular home--what a home must have re: space, safety, etc.--also, must agree to facilitate visiting

(h) Agency obligations to provide regular and emergency conferences for foster parents

(m) requirements re: agency notice to foster parents of their rights, including right to intervene in various court proceedings

section 443.5

Removal from foster home--required notification and agency action

section 443.6

Returning a child to a foster home after interruption in care or after placement in an institution--factors to consider

section 443.7

Procedures for certifying or approving potential foster homes on an emergency basis or foster homes of relatives--includes factors to consider; specifies that non-relative may include god parent or neighbor; *see 443.1*

section 443.8

Criminal history record check

section 443.9

Concurrent approval of foster parent and adoptive parent

sections 443.10 and 443.11

Annual recertification and nonrenewal of certificate