From Foster Parent to Adoptive Parent

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DECIDING TO ADOPT

When an agency, whether private (e.g. Concord Family Services) or public (Local DSS or ACS), or Family Court at a Permanency Hearing, changes a foster child's permanency goal to adoption, the agency must notify a foster parent caring for the child for 12 months, inform him of procedures for applying to adopt, offer an Application to Adopt and invite him to individual or group meetings to review legal differences between foster care and adoption, availability of adoption subsidy and related topics. A foster parent who has cared for a foster child for 12 months is entitled by law to a preference by way of first consideration in formulating a plan for the child's adoption (Social Services Law §383.3).

Daily life when raising a child is not much different if the child is officially foster or adoptive. The day-to-day tasks involved in child rearing are the same. There are meals to cook, clothes to wash, outings to plan, lessons to supervise, hugs to savor, conversations to share, discipline to administer, talents to develop, values to instill, ambitions to encourage and a mind to stimulate. If the family decides to adopt, what's the difference? Is it not just more of the same?

Yes, but also, no. There are significant practical and emotional differences between foster parenting and adoptive parenting. If an adoptive parent so chooses, at adoption he gives the child his last name. After finalization, caseworkers no longer visit the home and an adoptive parent does not have to share authority with an agency-he can make decisions about school, medical treatment, religious practice and a myriad of other parenting matters without someone looking over his shoulder or having to get permission. An adopted child will inherit from and is entitled to share in the estate of his or her adopted parent. Adoptive parents are financially responsible for the child's support until he or she becomes an adult, or earlier if emancipated, and also are liable for his or her actions should he or she injure someone, damage property or become involved in a legal dispute.

Research increasingly validates what foster parents long have known anecdotally about the effects of neglect, violence, parental substance abuse and placement or multiple placements upon child development. They witness first-hand what can result when children are raised in adverse or highly stressful environments: disassociation from reality, aggressiveness, destructiveness, mood swings, impulsivity and unpredictability, hypervigilance, hyperarousal, incessant chattering, disruptions or disturbances in bodily functions (eating/sleeping/urinating/defecating), excessive day-dreaming, indiscriminate affection for strangers, impaired speech and language, lack of empathy for others, short attention span, low tolerance for frustration, intense Lying, poor or no response to discipline, passivity, pervasive sadness or shame, persistent fear, over-competency, avoidance of intimacy, withdrawal from interactions and reciprocal fun, avoidance of physical contact or excessive clinging, inability to read social cues, play inhibition, lack of imagination and spontaneity, compulsive manipulation of others for control, relishing power struggles and accident-proneness are the most common.

Acknowledging, learning about and realistically considering the challenges of parenting a traumatized child are essential for making an informed decision to adopt. More is involved and to be anticipated than nurturing and guiding the child through otherwise predictable developmental stages and tasks. The hurt and fear caused by traumatic events are not merely bad memories that will lose their grip and dissipate over time (Shahinfar & Fox, The Effects of Trauma on Children [1997]). Traumatizing experiences during the first three years of life, the

most critical period of brain development, become encoded at the neurobiological level (Perry, Neurobiolonical Sequelae of Child Trauma [1994]). As the developing brain organizes itself in response to trauma, its systems, structures and neural connections, the "wiring" that determines how a child processes, integrates and stores information, what he perceives and how he makes meaning of events, are altered (Perry & Pollard, Altered Brain Development Following Global Neglect in Early Childhood [1997]. Situations or events that may be innocuous to an adult may appear threatening to a child. Any perceived threat triggers a predetermined set of unplanned, uncontrollable and more automatic than volitional efforts to suppress intense feelings of embarrassment, shame, guilt, fear, terror and pain associated with past trauma that are aroused. It is his mechanism for coping and protecting himself from being flooded by vulnerability, helplessness and neediness. Not having developed and not possessing a repertoire of alternatives to the "fight, flight and freeze" behaviors that characterize trauma reactions, he also does not know how to calm himself. The more primitive his reaction-responses, the harder it is for him to rewire (Perbix, Post Traumatic Stress Disorder: Implications and Interventions for Adoptive Children and Families [1998]).

Childhood trauma also can compromise all areas of development, such as identity formation, cognitive processing, behavior management, affect regulation, trust, and spiritual growth and if the child experienced abuse, especially sexual abuse, the effects may not manifest themselves until latter stages of development and have to be dealt with for an extended period of time with professional guidance and preventive or remedial interventions (Osofsky, The Effects of Violence on Young Children [1995]; Trainman, Ryan & Cardi, "The Effects of Foster Care Placement on Young Children's Mental Health," 16 P. C. 30 [2000]; Barth, Brodzinsky & Freundlich, Adoption and Prenatal Alcohol and Drug Exposure [2000]; Severson, Adoption and Attention Deficit Hyperactivity Disorder [1991]; Minshew, The Adoptive Family As A Healing Resource For the Sexually Abused Child [1 990]).

Even if a foster parent believes from having raised the child for a year or more that he knows and understands the child's behaviors, pre-placement experiences and special needs, he nonetheless should obtain from the agency the child's comprehensive health history, which includes to the extent available the medical history of the birth parents, which the agency is required to maintain (18 N.Y.C.R.R. §441.22[k]), and consult with the pediatrician or clinicians treating the child for clarification of implications for the child's future growth and development. As a matter of law, foster parents are entitled to receive from the agency upon request, without having to obtain a Court order, and agencies are required to provide foster parents with the medical history of the foster child they are considering adopting and the medical histories of the birth parents to the extent available, including all mental health information (Social Services Law §373-a).

Children adopted from foster care bring with them the background and experiences of their birth family and any prior foster care placements which will have to be incorporated into family life. Doing so requires honoring the child's birth heritage and positive memories and building upon them. In this and other respects, parenting adopted children is different than parenting children by birth. Unmatched expectations will have to be acknowledged and addressed and past experiences of both the child and the adopted family will have to be blended into ways of functioning that serve a new family unit. Because adoptive children all experience loss, they often go through a grieving process again and again at critical stages in their development. Rage and depression inherent in developmental grieving produce behaviors and patterns of behavior that will have to be recognized, understood and dealt with, as will the struggles most adopted

children have with issues of attachment, identity, intimacy, trust and mastery, that will have to be managed, and their inevitable quest for wholeness and connection with roots. "Roots, however twisted, are as vital for leafing the tree as warmth from the sun and sustenance from rain, without which a child adopted will forever at some level feel cosmically alone" (Severson, Adoptions: Philosophy and Experience [1994]).

Deciding to adopt requires a foster parent take stock of his capacity to parent the child as is, neither minimizing nor over exaggerating the challenges, assessing his attitudes toward alcoholic or drug-addicted, pain-inflicting, mentally ill or violent birth parents, his inclination and patience to look beyond a child's negative behavior to underlying conflicts or fears and initiate positive not punitive responses, capacity to empathize, tolerate uncertainty and ambiguity and bear witness to the child's pain, willingness to encourage open expression of feelings and experience, rely on outside help, join the child's treatment team and participate by reporting not concealing the bad and ugly interactions at home as well as the good, willingness to strengthen family functioning by incorporating rituals and ceremonies into family life (Roszia, The Use of Ritual and Ceremony for Healinq and Making Life Changes in Adoptive Families [1997]), openness to seeing and changing his own maladaptive responses to a child's often paradoxical behavior and his own flexibility and resourcefulness so as to determine if he and the lifestyle he enjoys or wants can accommodate the child. Making an informed decision to adopt requires knowing one's own strengths and needs more than if a parent by birth and what changes may be necessary to ready oneself for the tasks of adoptive parenting.

APPLYING TO ADOPT

A foster parent may apply to adopt a foster child who has been in his home whether or not freed or for approval as an adoptive parent generally (18 N.Y.C.R.R. §421.19). A person not already certified, licensed or approved as a foster parent may apply to an agency for approval as an adoptive parent generally or because interested in a child identified through albums of waiting children (see The Adoption Album, Office of Children and Family Services ["OCFS"]; New York City Family Album, NYC Children's Services). A uniform Application to Adopt was promulgated by State DSS in 1985. It continues to be used, but most agencies use their own more elaborate and comprehensive forms.

The agency must acknowledge receipt of a completed application within 10 days and prepare as rapidly as possible to assess the foster parent by reviewing information about him already contained in his foster parent record as may be supplemented by what the case worker supervising the home can provide, identify information needed for an adoption study which is lacking or insufficiently current, identify areas of family functioning which may need further exploration or strengthening and conduct an adoption study that does not repeat information already available or unnecessarily duplicates prior information gathering activities.

If not already contained in his record, an applicant must submit documentation of current employment and salary or income, current reports from a physician about the health of each member of the household, references from at least three persons, only one of whom may be related, who attest to his character, habits, reputation, personal qualities and suitability for child care, proof of marriage if married, proof of dissolution of any prior marriage by death or divorce, proof of separation if married but living separate and apart from a spouse by legally recognizable Agreement or Judgment or by affidavit attesting to having lived separate and apart from his or her spouse for a period of three years and sworn statements by and as to whether he or any person over 18 residing in the home has ever been convicted of a crime in New York or any other jurisdiction and, if so, the circumstances. Any person in the home over 18 not previously fingerprinted for criminal record review by OCFS or cleared of child abuse by the State Central Register ("SCR") must submit fingerprints and a request for abuse clearance which the applicant should assist in having done with dispatch.

The agency will visit the applicant's home at least once and conduct individual or group meetings with the applicant to explore the principles and requirements for adopting a child who is a member of a sibling group and for maintaining contact between siblings not adopted together, the principles of child development, his concerns and questions about and reasons and readiness for becoming an adoptive parent, attitudes of persons in the home about adoption and their concept of an adopted child's role in the family, awareness of the impact adoption may have upon family life, relationships and current life style, the agency's role in supervising and supporting an adoptive placement and the applicant's self assessment of his capacity to provide a child with a stable and meaningful relationship.

The criteria for adoptive parenting are alike in major aspects to criteria for foster parenting with some variations. An adoptive parent must be 18, free from communicable or contagious disease, infection or illness and in such physical condition that it is reasonable to expect him to live to the child's majority and have the energy and abilities needed to fulfill parental responsibilities. If the agency finds a physical condition or conditions likely to have negative effects upon an applicant's ability to carry out the parental role, it may discontinue the study, in which event it

must identify the condition or conditions it found and effects found or expected. If the applicant does not agree with the assessment of likely negative effects, he shall be given an opportunity to seek another medical opinion and submit another medical report before a final decision is made.

While an applicant may be rejected for poor health or limited life expectancy, and standards can vary from agency to agency, agencies are precluded by the Americans With Disabilities Act from establishing rejection criteria based on a disability per se (e.g., blindness, deafness, HIV infection, cancer and more). The act prohibits the "imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any services unless such criteria can be shown to be necessary for the provision of the services being offered" (42 U.S.C. §12182[b][2][A][1]); see, also, D.R.L. §110: agency may not reject applicant solely on the basis he had or has cancer). The essential inquiry is how health affects an applicant's child-caring capacities and ability to perform the routine tasks of childcare and daily living. An applicant may not be rejected for past alcohol abuse, drug use or mental illness, except as it affects present ability. The only mandatory disqualification is for current abuse of alcohol or drugs (18 N.Y.C.R.R. §421.16[p]).

An applicant may not be rejected solely because of age or age differential with the child (Matter of Jennifer A., 225 A.D. 2d 204 [1st Dept. 1996]), marital status (Matter of Byron "K'" 206 A.D.2d 642 [3rd Dept. 1994]: unmarried person not required to demonstrate exceptional circumstances in order to adopt), length of marriage, except a husband and wife must have been married not less than one year, family composition or the presence or absence of children in the home, except insofar as family size relates to the ability of a family to care for another child and effects the quality of life it would afford an adoptive child, lack of child care experience, lack of employment, education or volunteer activities except insofar as effects the applicant's ability to locate and take advantage of resources to strengthen parenting and improve family functioning, changes in employment and residence except insofar as they reflect upon ability to provide stability for the child, race, religion or ethnic group, except insofar as they relate to a specific child's individual needs, lack of income, low income, or maintenance through public assistance, except applicants with deficient budgeting or money management skills may be required to obtain training prerequisite to approval, or sexual orientation or because of preference for a child of the same or opposite sex, except exploration of sexual preferences and practices of an applicant, where found necessary and appropriate, shall be carried out openly with a clear explanation to the application of the basis for and relevance of the inquiry.

An adoptive parent is not automatically disqualified because the subject of an indicated report of child maltreatment, inadequate guardianship or abuse filed with the New York State Central Register ("SCR"). Justification for adoption notwithstanding the report can be shown by the episode having been an isolated one, what triggered it has been remedied through parenting training or other intervention, parenting skills have improved and similar offsetting factors. Patterns outweigh episodes, however, and more than one or several indicated reports may lead to rejection. When reporting the existence of an indicated report, SCR does not provide a copy to the agency. Applicants often do not have one and may never even have seen it. For the agency to obtain a copy, an applicant must authorize its release. *See below for information about fingerprint requirements and disqualification for criminal convictions*

The agency also will assess such personal characteristics of the applicant as his capacity to give and receive affection, ability to accept the intrinsic worth of a child and to respect and share his past, to understand the meaning of the separation he has experienced and have realistic

expectations and goals, the flexibility to change, the ability to cope with problems, stress and frustrations, the ability to provide for the child's physical and emotional needs, ability to make a commitment to the child and ability to use community resources to strengthen and enrich family functioning.

Unless discontinued by mutual consent, the agency must complete its study within two months if the child is legally freed or within four months if the child is not yet freed but in no event more than two months after the date the child becomes free, except where the applicant's illness or geographic absence makes him unavailable for a substantial part of that period or, with the consent of the applicant, the period is extended because of unavailability of staff.

The agency may reject an applicant if his lack of cooperation does not permit completion of the study or if it determines he is physically or emotionally incapable of caring for the child or approval would not be in the best interest of the child (18 N.Y.C.R.R. §421.15 [9] [2]). A rejection decision must be made by at least two staff members in conference, one of whom must be a supervisor. The agency must inform the applicant of rejection in writing, state its reasons and offer him an opportunity to discuss the matter with a supervisor. The rejection notice also must inform the applicant of his right to request a fair hearing before an OCFS Administrative Law Judge, and that the child, if or when free, will be photo-listed and made available for adoption by other persons.

Being a loving and devoted foster parent does not automatically translate into approval as an adoptive parent. In Matter of McClement v Beaudoin,267 A.D.2d 932 (3rd Dept. 1999) a foster mother applied to adopt two foster siblings, Robert and Stephanie, age 3 and 4, respectively, whom she had raised for 2 years. Both children had significant developmental deficits, including deficiencies in gross motor skills, difficulties with self-control and showed early signs of an attention deficit hyperactivity disorder. Both required a well-structured home with a caregiver willing to stay involved with extra-family service providers over the years and whose expectations and requirements for behavior would be clear, predictable and routine. While the foster mother was well-intentioned, local DSS denied her application to adopt as not in the children's best interests citing instances when she "did not fully cooperate" with day care personnel in the toilet training of Robert, showed "no concer n" about the children's behavior observed by a caseworker during a home visit when they were angrily fighting and hitting each other with the caseworker having to intervene when Robert threw a tricycle at Stephanie, demonstrated "inconsistent and strained" involvement with a community program in which her teenage son had been placed following her filing of a PINS petition against him and "lacked motivation" to participate in family therapy with her son. Following a Fair Hearing in which denial was sustained, she appealed to Supreme Court. It affirmed finding "substantial evidence" supporting denial of her application.

When an agency intends to approve an applicant, it shall prepare and review with the applicant a written summary of its findings and activities and permit the applicant to add an addendum with his comments. The agency and applicant must sign the summary and the agency must provide the applicant with a dated, written notice of approval and an Adoptive Placement Agreement and subsidy application (Appendix C) if the child is freed. The Agreement must be signed and returned within one month or the application will be deemed withdrawn and the child will be photo listed. The application also will be considered withdrawn, the Agreement abrogated and another home sought for the child by photo listing or otherwise if the applicant fails to initiate an adoption proceeding within three months of approval. If the child is not legally freed at the time

of approval, the Agreement and subsidy application will be sent upon entry of a Court order terminating parental rights or upon the parent's execution of a surrender relinquishing the child for adoption.

If unmarried persons who cohabit and are raising the child together are both approved as adoptive parents, they may petition to adopt jointly although only one is a certified, licensed or approved foster parent and he alone executes the Adoptive Placement Agreement. While not formally sanctioned by State regulations, "second parent" adoptions have been permitted in New York since the landmark decision of the New York Court of Appeals in Matter of Jacob and Matter of Dana,86 N.Y.2d 661 (1995). Of primary concern is the stability of the non-marital relationship and the benefits the child would derive from becoming the legal son or daughter of two persons who want him (see Matter of Adoption Joseph. 197 Misc.2d 485 [Surr. Ct. Oneida Co.1998]: unmarried couple who had cohabited for 29 years but who had no children together approved as adoptive parents for foster child placed with them by Oneida County Department of Social Services and finalized by Oneida County Surrogate); Matter of Carl, 709 N.Y.S. 2d 905 [Fam. Ct. Queens Co. 2000): petition by unmarried foster parents to adopt foster child granted in best interests of child; In Re Adoption of Emilio R.,293 82d 27 [15t Dept.2002]: Petition by maternal great aunt and her live in paramour who both raised child for 13 years granted as "it would be difficult to imagine adoptive parents more suitable").

Fingerprint requirements and disqualification for criminal convictions*: this section of Atty Neff's manual is under revisions due to recent changes in federal and NYS laws and regulation.. In the meantime see the following from OCFS Administrative Directive 08-OCFS-ADM-06*

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated, effective October 1, 2008, the ability of states to opt out of federal criminal history review standards and requires states to comply with such federal standards in order to receive federal Title IV-E payments for foster care or adoption assistance. Federal law had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents. Federal standards require the application of mandatory disqualification for certain categories of felony convictions.

Effective October 1, 2008, the federal statute, New York State law and soon to be filed OCFS implementing regulations prohibit the certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for a crime involving abuse or neglect, spousal abuse, or a crime against a child, or for a crime involving violence. In addition, certification or approval of a prospective foster or adoptive parent is also prohibited if such person has been convicted within 5 years of such application for assault or a drug related offense. If any felony conviction for one of the above noted categories of crimes occurs after October 1, 2008, the certification or approval must be revoked. Opportunity no longer exists for such person to rebut the presumption that he or she be denied certification or approval or to rebut the presumption that his or her certification or approval be revoked. **For more information see :** http://nysccc.shortfork.com/wp-content/uploads/2008/12/fingerprintchecks.pdf

COMMITTING TO ADOPT

Even if approved as an adoptive parent, a foster parent must commit to adopt, emotionally by claiming and legally by agreeing.

CLAIMING

Committing to adopt emotionally involves a foster parent and foster child claiming each other unconditionally. It is a conscious act of will. While getting to claiming may be incremental, claiming is a decision made at a distinct moment in time marked with ceremony and formalized. For a foster parent, it is the moment when he says without reservation "This is my child from this moment on. My decision is forever and I never will revisit or reexamine it." For the child, it is the moment he says "This if forever my mother and father and family."

Claiming is a process that adds a dimension of deliberateness and planfulness to family life and should be reinforced by such deliberate actions, among others, as having family portraits taken, making vacation and other long range plans together and, particularly with older children, holding an Adoption Ceremony where Adoption Covenants are signed. A foster parent Covenant expresses his promises and responsibilities as parent and the child's Covenant expresses his belief in what his foster parent promises. If possible, the Adoption Ceremony should be memorialized with photographs or video. The Adoption Ceremony represents closure to the foster care experience and the beginning of the adoption experience.

Should there be a disruption, Adoption Covenants written carefully enable the child to move on with little or no baggage from the disruption. The Covenants make it very clear even to young children who was responsible for the disruption. The essence of the covenant is the foster parent's promise to be the child's parent no matter what.

AGREEING

Committing to adopt legally involves a foster parent and agency entering into an Adoptive Placement Agreement specifying reciprocal interests and responsibilities, rights, duties and expectations. Signed only after a child becomes legally free, it converts the status of foster parent into adoptive parent. It does not, however, afford any legal protections in the integrity of the adoptive family pre-finalization than is afforded the foster family (Rodriouez v. McLounhlin, 214 F. 3d 328 [2d Cir. 2000]). The agency may remove the child provided it has a reasonable basis and is not acting arbitrarily or capriciously. However, in situations other than immanent danger, it must provide the family with written ten-day notice of removal in response to which the family may stay removal by requesting review of the agency's decision by the local Department of Social Services. If it sustains removal, the family may request a post-removal Fair Hearing before an Administrative Law Judge of the New York State Office of Children and Family Services. If the decision at Fair Hearing sustains removal, the family may seek judicial review in State Supreme Court. The scope of review, however, is limited to whether the determination of the Administrative Law Judge was made in violation of lawful procedure, was affected by an error of law or was arbitrary or capricious or an abuse of discretion. A pre-adoptive family aggrieved by removal of the adoptive child does not have standing in court to petition for an Order of Custody.

COMPILING LIFEBOOKS

The family traditionally is the repository where knowledge about a child is stored. Children separated from their birth family, or who have experienced multiple placements while in foster care, do not have ready access to information about their personal history, which becomes fragmented, making it more difficult for them to develop a strong and secure sense of self and for them to understand how their past influences their present behaviors. Without such awareness, it becomes more difficult for them to take responsibility for their own deeds. It is our past that confirms who we are and provides us with a foundation for building self-identity and self-esteem. Adoptive children are entitled to know their own history.

One technique for doing so is compiling the child's Lifebook. It provides a child with a chronology of his life and preserves his past by documenting and connecting important people and events in his life. It can be used therapeutically as a tool for resolving strong emotions about past events, especially those related to pain, separation and loss, can help him in separate reality from fantasy or magical thinking and can facilitate developmental attachment. If caseworkers have not compiled it earlier in placement, it falls to adoptive parents to initiate and ensure the child has a Lifebook.

A Lifebook is an accounting of the child's life by way of words, photographs, drawings, written anecdotes, certificates and awards and more. To the extent available it should include his developmental milestones, childhood illnesses, injuries and hospitalizations, significant events (losing his first tooth), accomplishments (learning to ride a bike), church and Sunday school experiences, special activities (scouting/clubs/camping), names of his teachers and schools attended, school papers and report cards, visits with birth relatives and who they are, pets, nicknames, trips and significant or memorable outings, best or favorite friends and possessions (toys/sporting memorabilia/videos/books/clothing), birthdays and religious celebrations, thing that he did when he was happy or excited, things he did while he was afraid and what he was afraid of, things that he did that were cute, things that he did to show affection, letters from or he wrote to his birth parents, anecdotes contributed by him, his birth parents and prior foster parents, playtime, bath time and bed time routines, favorite foods, photographs of the hospital where he was born, places and neighborhoods where he lived, the Courthouse where decisions about him were made, agency caseworkers, birth parents, siblings, and soon.

Since not all such information or documents are readily available, adoptive parents will have to be creative in locating people from whom or records and other sources from which it can be obtained. It is a project, but one in which the child should be an active participant. The process enhances integration, straightens cohesion and enables both the child and adoptive parents to validate memories (see, "The Lifebook" in Fahlberg, A Child's Journey Through Placement [1991]).

FINALIZING: APPLYING FOR ADOPTION SUBSIDY

A foster child whose guardianship and custody have been committed by Court order or surrender to Local DSS or an agency before his 1 8th birthday is eligible to receive an adoption subsidy until he becomes 21 if handicapped or hard to place without regard to the income or size of the adoptive family (Social Services Law §450 et. seq.) Virtually all subsidy eligible children automatically qualify also for medicaid benefits to 18 if hard to place or 21 if handicapped (42 U.S.C. §673-b). The few who do not may qualify for a medical subsidy (S.S.L. §454; 18 N.Y.C.R.R. §421.24[e]). A foster child is subsidy eligible without commitment by surrender or order if his parents or only known parent is deceased.

To qualify as handicapped, a child must possess 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 his adoption, including but not limited to (i) any medical or dental condition which will require frequent or repeated treatment or hospitalization and 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 employment as defined by Sections 1002 and 4001 of the Education Law, or qualifies the child as a physically disabled child within the meaning of Section 2581 of the Public Health Law because suffering from long term disease, including by way of illustration and not limitation, cystic fibrosis, muscular dystrophy, rheumatic fever and rheumatic heart disease, cancer, and chronic asthma, or from any disease or condition likely to result in a disability in the absence of treatment; (iii) any substantial disfigurement, such as the loss or deformation of 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 or authority figures, including retardation or developmental disability. Once approved, subsidy for a handicapped child is not affected by subsequent amelioration, remission or cure of the handicapping condition.

A child is hard to place if (i) one of a group of two siblings including half siblings one of whom is 5 years old or older, or a member of a minority group substantially over represented in the foster care population (i.e., Black or Hispanic) or otherwise is subsidy eligible; (ii) placed for adoption with a sibling or half sibling already adopted either one of whom meets one of the foregoing criteria; (iii) one of a group of three or more siblings or half siblings placed together; (iv) 8 years old or older and Black or Hispanic; (v) 10 years old or older, (vi) in the care of the same foster parent for 12 months or more before execution of an Adoptive Placement Agreement and has developed such strong attachment that separation would adversely affect his development, or (vii) not placed for adoption within six months from the date freed or within six months from the date a previous adoptive placement terminated.

With approval of a foster parent as an adoptive parent or upon execution of the Adoptive Placement Agreement, whichever is earlier, the agency must provide the foster parent with an Adoption Subsidy Agreement. The agency forwards the completed agreement with all documentation relevant to eligibility for review to Local DSS which, unless authorized to approve subsidy itself, forwards the material with its recommendation to the OFCS State Adoption Service for review and final approval. An approved agreement will be returned to the agency. An adoptive parent aggrieved by denial of subsidy may request a fair hearing before an

OCFS Administrative Law Judge. Except for handicapped children who qualify for higher rates, subsidy for hard to place or handicapped children is at a basic rate which is the same or less than the maximum board rate as the same may be changed by the State from time to time and which varies among the 58 Local DSS districts and with the child's age. Districts may opt to pay subsidy at less than the maximum rate, but not less than 75% thereof, and must use the same method for all applicants. Thirty four districts have opted to pay less. They determine the amount in accordance with a formula that considers family income and size and how it relates to the Applicable State Income Standard (275% of the most recent Federal income poverty line as defined and annually revised by the Federal Office of Management and Budget).

Once approved, subsidy is not subject to annual review and may not be decreased except with the adoptive parent's consent and written amendment of the Agreement. Whenever there is an increase in the applicable board rate, or the child moves into an older age bracket, the subsidy payment will increase automatically. Payments will continue to be made in accordance with the terms of the Agreement to an adoptive parent who resides or moves out of State. An adoptive parent is required to notify Local DSS when he no longer is providing support for the child or no longer is legally responsible for support by emancipation or otherwise. If a family moves to a State (e.g., North Carolina) where parental support obligations end when the child becomes 18, subsidy also will end at 18. If an adoptive parent dies before a child becomes 21, subsidy will continue to be paid to a person who becomes legal guardian by Will or Court order.

A handicapped child requiring care or supervision beyond what reasonably may be regarded as routine or typical may qualify for rates beyond basic (18 N.Y.C.R.R. §427.6). To qualify for a special rate, a child must suffer from a pronounced physical condition as a result of which a physician certifies he requires a high degree of physical care or has been diagnosed by a qualified psychiatrist or psychologist as being moderately developmentally disabled, emotionally disturbed or having a behavioral disorder to the extent he requires a high degree of supervision.

A child may qualify for an exceptional rate if (i) a physician certifies the child requires 24 hour a day care by a qualified nurse or a person closely supervised by a qualified nurse or physician; (ii) he has severe behavior problems characterized by the infliction of violence on himself, others or his physical surroundings and a qualified psychiatrist or psychologist certifies he requires a high level of individual supervision in the home; (iii) he has been diagnosed by a qualified physician as having severe mental illness such as child schizophrenia, severe developmental disabilities, brain damage or autism, or (iv) he has been diagnosed by a physician as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus-related illness (HIV) as defined by the AIDS Institute of the State Department of Health.

Subsidy must be approved before finalization. It cannot be approved retroactively. However, a post-adoption application for a rate increase can be made where the full extent of the child's condition was not known or had not revealed itself before adoption and a physician certifies the condition existed prior to finalization. Documentation and procedures are the same as for pre-adoption applications.

Qualification for special or exceptional rates is based entirely upon the report of a clinician. Adoptive parents have a role in preparation of the clinician's report and, by maximizing participation, can help reduce or eliminate many common mistakes or pitfalls. They can help train clinicians to understand what is required. Many applications are rejected at least initially

because the report is deficient.

The report must be current, not an existing or old one, should be prepared specifically for the purpose of applying for subsidy and must be signed by a physician, psychiatrist or psychologist as appropriate, not by a nurse practitioner, speech therapist or other health care provider or educator. The child's Individualized Education Plan is not sufficient. The report should begin with acknowledgement that the child is being examined for adoption subsidy purposes and because the adoptive parent may require extra resources to take care of the child's special or exceptional needs. It should contain a record of the doctor's examination with a description of tests administered, test results, diagnosis(es), a description of how the child's problem effects his daily life with a summary of the frequency and severity of episodes, pattern and frequency of intervention by emergency room visit or hospitalization, current treatment and treatment plan, including medications prescribed, dosage and frequency, obstacles to treatment and, for applications based upon HIV related illness, the results of a PCR test.

Approval of a special or exceptional rate application is an executive function beyond the authority of Family Court to order or review (In Re Hasahni B., 195 A.D. 2d 404 [1st Dept. 1993]). Rate decisions are reviewable and an adoptive parent aggrieved by denial of a rate application may request a Fair Hearing before an OCFS Administrative Law Judge. If denial is sustained by Decision After Fair Hearing, he may petition State Supreme Court to reverse the decision as arbitrary, capricious, or an abuse of discretion, made in violation of lawful procedure or not supported by substantial evidence. The reported decisions make clear that the child's condition alone is not controlling. Highly relevant and determinative is how that condition manifests itself in the child's daily life with concomitant demands on the adoptive parent's effort, time and money. Some children with an attention deficit hyperactivity disorder may be controllable by medication. Some may require therapy in addition to medication, while some may not be controllable with either. Whether an ADHD child qualifies for a special or exceptional rate depends upon what is happening with the individual child and what his adoptive parent has to do for him.

It is unnecessary for approval of a special or exceptional rate subsidy, as it was for approval of a special or exceptional board rate, that an adoptive parent also qualify by experience or training and demonstrate an ability to provide the supervision the child needs or the ability to accept assistance and guidance and work with professional involved in treating the child. However, it is both relevant and persuasive for a report 1 describe how an adoptive parent is involved and what he does to help the child, as f~ example attending therapy sessions, going to the library and reading books, finding or taking classes, involving himself and the child in groups and after school activities. By presenting himself as a participant in the child's treatment, an adoptive parent can show why the higher rated justified.

The adoptive parent should accompany the child for examination, not just send a babysitter or relative, to establish a relationship with the doctor and provide information directly, not rely solely upon the case worker to provide information which may be cursory and not complete. The doctor should know from the adoptive parent first-hand about the child's behavior and what it is like to live with the child daily. The adoptive parent should also make an appointment to review the report with the doctor after it is completed, not only to more fully understand the clinical picture but also to correct or augment language. For example, an examiner who concludes a child has an impulse control problem should state what he himself has observed and not merely "the

adoptive parent reports that…" Reports of mental or emotional disorders must contain entries in all of the required five DSM-V axis: I (psychiatric disorder by number); II (psychological disorders, V-71.09 if none or V-799.0 if deferred); III (medical - if none write none); IV (cause - psychosocial stressor, i.e., what causes the thing); and V (global assessment of functioning or GAF which should not be above 60).

The Internal Revenue Service deems adoption subsidy payments to be public welfare benefits and thus exempt from income taxation. IRS Publication 17 expressly instructs adoptive parents to "not include in your income payments from a state agency to help you care for your adoptive child" (P.67). Conversely, to claim a legally adopted child as a dependant, adoptive parents receiving subsidy must provide more than half of the child's total support during the calendar year from non-subsidy funds. Thus, adoptive parents receiving $4,000 a year in subsidy must be able to document they provided at least $4,001 in additional support from personal funds in order to claim the child as a dependant. The foregoing is information only and is not intended as legal advice. Adoptive parents should always consult with their tax preparer or IRS before filing. While not considered income for income tax purposes, subsidy payments may be considered income for other purposes as, for example, eligibility for subsidized housing. Various governmental and other agencies have different definitions of income requiring in some instances that subsidy payments be included.

GATHERING DOCUMENTS AND REPORTS

The adoptive parent and agency share responsibility for gathering documents and reports required for finalization. The agency is responsible for documenting the child's eligibility for adoption and medical history. The adoptive parent is responsible for documenting marital status. They share responsibility for subsidy approval and for documenting the adoptive parent's suitability to adopt.

The agency obtains one and preferably two certificates of birth for the child, one of which is retained as a permanent part of the Court file. If it obtains two copies, the second is forwarded after finalization to and accepted by the Department of Health "in exchange" for the child's new certificate. It also secures a certified copy of the Court order freeing the child for adoption, or a certified copy of the birth parent's surrender, and records both with the County Clerk. For a child's whose eligibility for adoption arises from the death of a parent, it must obtain the parent's Certificate of Death from the Department of Health. It also obtains a report from the New York Putative Father Registry to determine if there is a father otherwise unaccounted for who must be given notice of adoption.

Adoptive parents who are husband and wife must provide their certificate of marriage. A spouse who was married previously must obtain a certificate of death or divorce judgment dissolving each prior marriage. Documents in Spanish or other languages must have attached a certified English translation. A married adoptive parent petitioning to adopt singly must provide a certificate of marriage and proof of legal separation by Agreement or Judgment, or if not legally separated, an affidavit attesting to having lived separate or apart from his spouse for more than three years.

As to documentation of suitability, the agency prepares a Homestudy of the adoptive parent(s) and family and secures from SCR current abuse clearances. If it has not received from OCFS any report of arrest subsequent to initial criminal record review, it also prepares an affidavit to that effect. Each adoptive parent or adult residing in the home with a criminal record must sign an affidavit explaining each offense and secure a Certificate of Disposition for each pending charge. Adoptive parents must secure current medical reports.

The agency compiles the child's family heritage and medical history, secures his current medical report and subsidy approval and provides the adoptive parent with a copy of each (Domestic Relations Law §114). In addition to information contained in the prescribed form, the child's medical history to which adoptive parents are entitled includes copies of all available reports and evaluations, including by way of illustration and not limitation, the child's hospital birth record, psychological, psychiatric, developmental and neurological reports and treatment summaries. It also includes to the extent available medical history of the child's biological parents, including conditions or diseases believed to be hereditary, their psychological or mental health history and drugs or medications taken by the mother during pregnancy (Social Services Law §373-a); see, also, DeWoody, "Adoption and Disclosure of Medical and Social History: A Review of the Law, 72 Child Welfare 957 [1993]). Heritage information includes the sex and age of the child's known
siblings (Public Health Law §41-38-c.3).

If the child has been placed with adoptive parents who reside or move out of State, the agency must obtain approval of the placement through the Interstate Compact on the Placement of Children (S.S.L. §374-a) on form 100-A signed by compact administratons for New York and the receiving State.

The foregoing documents and reports comprise a basic "adoption packet"for initiating an agency-sponsored adoption proceeding (see affached Checklist). The Court may dispense with required documents upon application for good cause (22 N.Y.C.R.R. §205.53[b]).

Although not required by statute, Court nule or professional standards, a Judge in his discretion may request particularly of a single or elderly adoptive parent or one with serious medical problems that he designate a backup who agrees to assume responsibility for the child in the event he becomes disabled or dies and may also request the agency prepare a homestudy of the backup and secure his or her abuse clearance and criminal record review. It is prudent to anticipate what a Judge may request in a particular case and to proceed accordingly. Designation of a backup in this manner is not legally binding and in fact has no legal consequence, but satisfies curiosity or concern as to whether there has been affention to the maffer and whether a plan is in place.

GLOSSARY

Abuse Clearance: A report obtained by the agency from the New York State Central Register on whether an adoptive parent or other household adult is the subject of an indicated report of maltreatment, inadequate guardianship or abuse of a child.

Adoption: An emotional and legal process for establishing parent-child and family relationships other than biologically but having the same legal protections and social status.

Adoption Covenant: Written, unconditional and final commitments by adoptive parents to adoptive child and the adoptee's commitment contingent upon their promise.

Adoption Information Registry: A database maintained by a state agency with which a birth parent, adoptive child and adoptive parent may register his willingness to share identifying information with the other parties to the adoption triad.

Adoption Subsidy: If a child is subsidy eligible because hard to place or handicapped as such terms are defined by law, an adopted parent may apply for and if approved receive from local government (City, County or State) monthly payments for the care and support of the child at rates that vary according to age or the child's special or exceptional needs from the date of finalization until the child becomes 21 or earlier if emancipated or no longer dependant for support upon the adoptive parent.

Adoption Triad: The three parties involved in any adoption: birth parent, adoptive child and adoptive parent.

Adoptive Placement Agreement: A contract executed by an adoptive parent and agency after the child is legally free for adoption specifying reciprocal interests and responsibilities, rights, duties and expectations, several terms of which are prescribed by law and the execution of which converts the status of a foster parent to an adoptive parent.

Attachment: An emotional and enduring but paradoxically fragile and vulnerable relationship between a child and one or more caregiving adults which is a prerequisite for development of a child's identity and trust.

Attention Deficit Hyperactivity Disorder: A complex neurobiological condition encompassing a cluster of symptoms, including byway of illustration and not limitation, impulsivity, low tolerance for frustration, short attention span, hyperarousal and difficulties in concentrating, that cause or exacerbate cognitive, emotional and behavioral problems.

Certificate of Adoption: A document embossed with the seal of the Court attesting to adoption having the same force and effect as a certified Order of Adoption given to adoptive parents upon finalization as a memento and for use as proof of adoption until they receive the adoptive child's new Certificate of Birth.

Certificate of Disposition: A statement obtained by an adoptive parent or other household adult from the Court in which he was prosecuted for a crime reporting the disposition thereof if otherwise not shown in his criminal record review.

Claiming: An emotional process by which adoptive parents and adoptive children come to accept each other as full fledged members of a family.

Consent Father: A putative father who, promptly after the child's birth, evinces a substantial interest or commitment and establishes and maintains a substantial relationship with the child by, for example, cohabiting with the child and birth mother, visiting at least monthly or communicating with the child regularly if unable to visit, paying a fair and reasonable part or all of the medical expenses incurred by the birth mother during her pregnancy or in connection with the child's birth or paying support for the child in accordance with his means, thereby acquires the right of consent to the child's adoption and who may veto adoption by withholding consent.

Criminal History Review: A report obtained by the agency from the New York State office of Children and Family Services on whether an adoptive parent or other household adult has been convicted of a crime in the state of New York or was arrested on charges pending or not resolved.

Developmental Disability: A genetic disorder that impairs development of cognitive and motor skills of which Cerebral Palsy is one example.

Disruption: Irreconcilable differences in an adoptive family before adoption finalization that result in the replacement of the adoptive child to another home or setting.

Dissociation: The mental process of disengaging from the stimuli in the external environment and attending to inner stimuli. This is a graded mental process that ranges from normative daydreaming to pathological disturbances that may include exclusive focus on an inner fantasy world, loss of identity, disorientation, perceptual disturbances or even disruptions in identity.

Fair Hearing: Administrative review by a county or state agency of a decision made by a public or private adoption agency with a view toward affirming or reversing it.

Family Heritage: Those characteristics, attributes, traits and accomplishments of birth parents specified by law that are a child's legacy and birthright which the agency must give to adoptive parents upon adoption finalization, including the age and sex of know siblings and medical histories of the birth parents and their families.

Hyperarousal: Mental and physical changes in the central and peripheral nervous system activation to perceived or actual threat, including increased sensory and perceptual focus on the threat, activation of physiological systems required for survival and corresponding changes in emotional and behavioral functioning.

Interstate Compact Approval: Approval of the child's placement with an adoptive parent who resides out of state, or moves with the child from New York to another state, by social services officials in the receiving state.

Kinship Home: Placement of a child for foster care or adoption with a maternal or paternal blood relative or relative by marriage.

Legal Father: The husband of a woman who gives birth to a child has parental rights over the child equivalent to those of the mother even though he is not the biological father.

Legally Free: A child in foster care becomes legally free or eligible for adoption through voluntary relinquishment or death of a birth parent or parents or by Court Order terminating parental rights, the effect of which is to transfer and commit to the foster care agency the legal power to consent to the child's adoption without and in lieu of the birth parent's consent.

Lifebook: A homemade book that helps a child prepare for adoption by documenting important people and events in his life and includes pictures, drawings, school papers, reports, awards and certificates, photographs, letters and written anecdotes contributed by the adoptive parents, birth parents, the child himself and others.

Non-identifying Information: Psychosocial and historical information about a child given by an agency to adoptive parents or prospective adoptive parents that does not identify the birth parents by name.

Non-recurring Adoption Expenses: One-time expenses such as attorney's fees, interstate travel for finalization, fees for medical examinations or required documents for which an adoptive parent will be reimbursed up to a maximum of $2000.00 per child by local government provided the adoption is subsidized.

Notice Father: A putative father who, by being registered as father with the State Putative Father Registry, identified as father in the child's Certificate of Birth or by the birth mother in a sworn statement, is adjudicated the child's father by Order of Filiation or executes jointly with the birth mother and files with the Department of Health an Acknowledgment of Paternity, thereby becomes entitled to Notice of any Court proceeding involving the child, including voluntary surrender, termination of parental rights and adoption.

Putative Father: The person who claims or acknowledges or reputed to be the biological father of a child born to an unmarried woman or to a married woman who claims he and not her husband is the child's birth father.

Safety Assessment: A report prepared by the agency justifying adoption notwithstanding conviction of an adoptive parent or other household adult for one or more crimes in the State of New York.

Surrender: A document signed by a birth parent in front of a Judge relinquishing a child for adoption, the effect of which is to transfer to and empower an agency to give consent to the child's adoption without and in lieu of the birth parent's consent.

Wrongful Adoption: A cause of action an adoptive parent may have against an agency to recover damages for the agency's failure to disclose or misrepresenting the health or background of the childupon which they relied when committing themselves to adopt.