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### Administrative Directive

<b>Transmittal:</b>	09-OCFS-ADM-11
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	May 7, 2009
<b>Subject:</b>	<b>Adoption Subsidy and Education Requirements for Adopted Children</b>
<b>Suggested Distribution:</b>	Directors of Service Adoption/Post Adoption Supervisors Staff Development Coordinators
<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office: Buffalo Regional Office – Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> Rochester Regional Office – Linda Kurtz (585) 238-8201 <a href="mailto:Linda.Kurtz@ocfs.state.ny.us">Linda.Kurtz@ocfs.state.ny.us</a> Syracuse Regional Office – Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> Albany Regional Office – Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> Spring Valley Regional Office – Pat Sheehy (845) 708-2498 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> NYC Regional Office – Patricia Beresford (212) 383-4873 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services – Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a>
<b>Attachments:</b>	Attachment A – Model Letter regarding Parental Certification of Continued Support and Educational Status of Child Attachment B – Model Form: Parental Certification of Continued Support and Educational Status of Child (OCFS-7069)
<b>Attachment Available Online:</b>	Yes

## Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.24 (c) (19)	SSL§453 (1) (c)	Eligibility Manual for Child Welfare Programs	

### I. Purpose

The purpose of this Administrative Directive (ADM) is to provide guidance to social services districts about new requirements regarding adoption subsidy and education-related provisions enacted by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 [Fostering Connections Act] (P.L. 110-351) and implementing state regulations, currently in effect on an emergency basis. In addition, this ADM will remind social service district officials of the requirement, on an annual basis (formerly, on a biennial basis), to issue in written form a reminder to adoptive parents in receipt of adoption subsidy payments of their obligation to support the adopted child and to notify the social services official if they are no longer providing any support or are no longer legally responsible for the support of the adopted child. Lastly, this ADM provides a model letter and certification form pertinent to these requirements.

### II. Background

When a child is adopted with subsidy, as part of the signed adoption subsidy agreement between the adoptive parents and the social service district, the adoptive parents are informed that they are obligated to notify the social services district of any changes in the residential or dependency status of the child, including circumstances which would make them ineligible for adoption subsidy.

The Fostering Connections Act places great emphasis on educational matters for foster and adopted children. The Fostering Connections Act requires assurances applicable to each child eligible for Title IV-E funding who has attained the minimum age for compulsory education under state law. In implementing the federal law, the applicable New York State standards will apply to all foster children and children in receipt of adoption subsidy, irrespective of whether or not they are eligible for Title IV-E. For a foster child, the assurances will be provided by the social services district or voluntary authorized agency with case management, case planning or casework responsibility. However, in regard to an adopted child, the adoptive parents must provide the required assurances.

For adopted children in receipt of adoption subsidy who are of school-age under the laws of the state in which the child resides, the adoptive parents must certify that the adopted child is one of the following:

- a full-time elementary or secondary student ;
- has completed secondary education; or
- is incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.

For purposes of this certification, an elementary or secondary school student means an adopted child who is:

- enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws of the jurisdiction in which the school is located;
- instructed in elementary or secondary education at home, in accordance with the laws of the jurisdiction in which the adopted child's home is located; or
- in an elementary or secondary independent study education program, administered by the local school or school district, in accordance with the laws of the jurisdiction in which the adopted child's school or school district is located.

Effective December 31, 2008, the Office of Children and Family Services (OCFS) filed regulations on an emergency basis to implement various provisions of the Fostering Connections Act, and re-filed such regulations effective March 26, 2009. OCFS regulation 18 NYCRR 421.24(c)(19), provides that the social services official must on an annual basis (formerly biennial basis), in a written notification, remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. In addition, OCFS regulation 18 NYCRR 421.24(c)(19) requires that the adoptive parents provide a certification of the education status of the school-age adopted child.

### **III. Program Implications**

As part of Title IV-E State Plan requirements to implement section 204 of the Fostering Connections Act, OCFS must attest to how the provisions regarding school attendance of children adopted with subsidy are being implemented. Failure to comply could result in the loss of at least a portion of the state's Title IV-E reimbursement.

This ADM and the attached Model Letter and Model Certification form provide social services districts with a means and process to meet the requirements. In addition, in the near future, OCFS will modify Appendix A of the adoption subsidy agreement, so that adoptive parents understand prospectively that they will be asked annually to certify as to the educational status of the adopted child.

It is important to understand the ramifications of replies and how to address the circumstance when a reply is not received. Although the expectation is that all adoptive parents will reply; practically, there will always be some who do not reply. Furthermore, questions have been raised regarding when submission of additional proof (relevant to both support and school attendance) beyond certification, can, or should, be requested.

OCFS has been advised by the federal Administration for Children and Families (ACF) that because the federal adoption assistance program is an entitlement, the state may not impose additional criteria beyond the federal requirements. Furthermore, ACF advised against any intensive or intrusive inquiry into an adoptive family's life. However, attestations and affidavits by the adoptive parents were stated by ACF as being acceptable means of verifying support. ACF informed OCFS that the state cannot terminate or suspend adoption assistance if the adoptive parents fail to reply to the state's request for information. Taking this guidance from ACF, OCFS concludes that a certification may be used in regard to the education status of the adopted child and that adoption subsidy may not be suspended or terminated for the failure to respond to the request for certification.

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

Social services districts, on an annual basis, are to send the Model Letter, or a comparable letter, to adoptive parents receiving adoption subsidy. Social services districts are to enclose the Model Certification form, or comparable form, instructing the adoptive parents to complete, sign and return the form, according to the instructions on the form. A reasonable time for the return of the form should be indicated in the letter or on the certification form. In the event 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.

If at any time, or in response to the inquiry, the social services district is advised 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 WMS case must be closed and subsidy payments must cease as of the date of the change of circumstance, in accordance with section 453(1)(c) of the SSL. 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. Examples of such change in circumstance that warrant termination include, but are not limited to: a child's marriage, a child's death, a child entering into the military, and any other circumstance whereby adoptive parent(s) are not providing any support to the child. Follow-up inquiry may be necessary to determine the

precise date to terminate adoption subsidy payments and/or arrange for any necessary recovery of over payments.

As before, copies of all inquiry letters, and all responses 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.

With regard to the educational status of the school-age adopted child, if a reply is received indicating the child has a medical condition which incapacity makes the child unable to attend school full time, the child's condition must be documented by a physician, or a physician's assistant or nurse practitioner under the supervision of a physician, or a licensed psychologist. Upon failure to receive this documentation, every effort should be made to seek it.

If the social services district is informed that the school-age child has not completed compulsory education, is not a full-time student as defined above, or is incapable of attending school on a full-time basis due to the medical condition of the child, as supported by required documentation, subsidy must continue to be paid, as long as the adoptive parents are providing any support for the child and the adoptive parents continue to be legally responsible for the support of the child.

However, in such cases, the social services district should consider whether it is appropriate to make a report of suspected child maltreatment on the basis of educational neglect to the Statewide Central Register of Child Abuse and Maltreatment. Every effort should be made to confirm the educational status of the child before making such a report. OCFS does not recommend that a report be made only on the basis of the failure of the adoptive parents to provide a response or where the response does not adequately demonstrate that the child is a full-time student, has completed his/her compulsory education or has a medical condition that prevents the child from attending school on a full-time basis. The failure to respond would not, in and of itself, constitute reasonable cause to suspect educational neglect. The social services district would need additional information providing reasonable cause to suspect that the child was not receiving an education in compliance with the compulsory education requirements of the Education Law and that the adoptive parents were at least to some degree responsible for the failure of the child to receive an education.

If, based on additional information collected, the social services district has reasonable cause to suspect that the child is being educationally neglected, then a report to the Statewide Central Register of Child Abuse and Maltreatment is appropriate.

**V. Systems Implications**

None

**VI. Additional Information**

For any youth, whose adoptive parents have died or sole surviving adopted parent has died prior to the eighteenth birthday of the adopted child and for which an adoption subsidy is currently being paid to a legal guardian or legal custodian, or for any youth over the age of 18 for which an adoption subsidy is currently being paid to the legal guardian, the child him- or herself or to a representative payee, it is the districts obligation to determine annually whether the youth is still dependent upon the adoption subsidy, and for youth who have not graduated from high school, the youth's educational status.

The attached Certification form [OCFS-7069 (4/2009)] will be made available on the OCFS internet and intranet forms site.

## **VII. Effective Date**

This directive is immediately effective, retroactive to December 31, 2008, the date of initial filing of the emergency regulations which implement the requirements of the Fostering Connections Act.

*/s/ Nancy W. Martinez*

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**Issued By:**

Name: Nancy W. Martinez,

Title: Director

Division/Office: Strategic Planning and Policy Development