

**CHAPTER 3 OF THE LAWS OF 2005 - PERMANENCY BILL FAQs**  
**ACRONYMS AND TERMS USED**

ADM – Administrative Directive

AWOL – Absent Without Leave

BICS - Benefit Issuance & Control System

CAPTA – Child Abuse Prevention and Treatment Act

CCRS – Child Care Review Service

CID – Case Initiation Date

CPLR – Civil Practice Law and Rules

CPS – Child Protective Services

CSEU – Child Support Enforcement Unit

DRL – Domestic Relations Law

EAF – Emergency Assistance for Families

FASP – Family Assessment and Services Plan

FCA – Family Court Act

FPLS – Federal Parent Locator Search

HIPAA – Health Insurance Portability and Accountability Act

HIV - Human Immunodeficiency Virus

JD – Juvenile Delinquent

LCM - Local Commissioners Memorandum

LDSS – Local Social Services District

NRE – No Reasonable Efforts

NYCRR – New York Code, Rules and Regulations

OCA – New York State Office of Court Administration

OCFS – New York State Office of Children and Family Services

PINS – Person In Need of Supervision

SPR - Service Plan Review

SSL – Social Services Law

TPR – Termination of Parental Rights

UCMS – Unified Court Management System

UCR – Uniform Case Record

WMS - Welfare Management System

## **Chapter 3 of the Laws of 2005 - Governor's Permanency Bill** **Frequently Asked Questions**

### **General Questions**

1. What is the effective date of the Permanency Bill?

There are two effective dates for the Permanency Bill, Chapter 3 of the Laws of 2005. The provisions regarding mandated reporters (amends SSL §415), aggravated circumstances (amends FCA §§301.2, 712(g), 1012(j); SSL §358-a), and Article 10 default judgments (amends FCA §1042), are effective November 21, 2005.

The rest of the provisions of the bill, including new FCA Article 10-A, are effective December 21, 2005.

2. What, if anything, should LDSS be doing now to be prepared for implementation?

As required by the Memorandum issued by Chief Administrative Judge Jonathan Lippman dated August 31, 2005, date-certain permanency hearings must be calendared as if the bill were in effect for the following children:

- non-PINS/JD new foster care placements that occur between now and the December 21, 2005 effective date;
- children currently in foster care who have permanency hearings held between now and the effective date; and
- any other hearing where a child currently in foster care may come before the court during the transition period.

This means that for the new non-PINS/JD foster care placements, a date certain is set by the court for the permanency hearing, to be held no later than 8 months from the date of the physical removal of the child from his or her home, at the hearing where a child is remanded or placed. For the existing non-PINS/JD children in foster care and PINS/JD children who are freed for adoption who have permanency hearings that occur during the transition period or who come before the court for any other reason during this period, date-certain permanency hearings must be calendared for 6 months from the permanency hearing that is held.

However, if your family court has not begun establishing date-certain permanency hearings for these groups of children in foster care, you may wish to either suggest that it do so, on a case-by-case basis when the court does not calendar on its own initiative, or schedule a meeting with the court clerk to discuss this approach.

It is very that important that the calendaring described above begin now, since after Chapter 3 takes effect on December 21, 2005, there will be no process for LDSS to submit a petition to the court for docketing and scheduling of a permanency hearing. Instead, the court must calendar these hearings as quickly as it is able in order to move toward the new every 6 month statutory permanency hearing timeframe.

OCA and OCFS, working in collaboration, have provided courts and LDSS in each county with a list of children in foster care who are, or may be, subject to the date-certain provisions of the Permanency Bill. This list will serve as a tool to facilitate services administrators and court clerks in identifying the universe of foster children for whom date certain permanency hearings must be calendared who under the old statutory provisions, would not have permanency hearings due to be held before the Permanency Bill's December 21, 2005 effective date. The list was derived from data from CCRS and the Unified Court Management System (UCMS). The list may be somewhat over-inclusive and include some children whose date-certain hearings are scheduled to be conducted during a court appearance within the transition period. However, it should allow identification of all the children who need date-certain permanency hearings calendared, and will contain useful information including, but not limited to, the docket number, the date of the last court appearance and the foster care admission date.

3. Should LDSS be working with their courts now to prepare for implementation?

Yes, OCFS is strongly urging close collaboration between each LDSS and the family court to discuss how and when such date-certain permanency hearings should be calendared.

4. Has the definition of "foster care" changed?

No, the definition of foster care has not changed.

### **Emergency Removals**

5. Define "immediately calendar" for FCA §1022 pre-petition removal hearings.

The intent of the language is to require a hearing the same day the application is made. However, the procedure a court will use to accommodate the process will depend on court resources and flexibility. The bill also requires that if at the end of the day there has not been a determination made by the court, the hearing will continue the next morning until the determination is made. It is recommended that each LDSS meet with its family court to determine the procedure to be used in

that jurisdiction, if one does not already exist.

6. What is “good cause” for late filing of the petition in Article 10 proceedings where a child has been removed? Give examples of what a court might accept.

Generally, good cause is the justification made to the court when requesting additional time to file a petition. What a court will accept as “good cause” will depend on the court. However, given the emphasis placed upon early court review of any removal both by the Permanency Bill and the Court of Appeals in the recent Nicholson v. Scopetta decision (3 N.Y.3d 357, 387 N.Y.S.2d 196 (2004)), such an application should rarely be made and any application must be reasonable and in good faith.

7. When a child has been removed from his or her home, FCA §1035 requires that the petition and summons be served on the same day the petition is filed. Is this rule for abuse cases, neglect cases – or both?

FCA §1035 now requires that where a child has been removed from his or her home, the petition and summons must be served the same day the petition is filed, regardless of whether the removal was based upon abuse or neglect. FCA §1035 has also been amended to provide different standards for the issuance of the summons and petition where the child has NOT been removed. In both instances, a petition based upon allegations of abuse must still be clearly marked “Child Abuse Case”, regardless of whether the child has been removed.

8. Also under Section 1035 of the FCA, the existing law says that the summons must require the parent or other person legally responsible for the child to appear in court within three days. Does that change under the bill?

The bill amends Section 1035 to specify that the time frame may be shorter than three days if there has been a temporary removal with consent, a temporary removal under a court order or an emergency removal. If one of those has occurred, the time frame for going to court will be that set forth in the statutes governing the type of removal that occurred.

9. Regarding the provision that says that the court is now required to hold hearings immediately after a child is removed from home, does that amend the prior process regarding FCA §1028 “immediate” hearings, which are only held at the parent’s request?

Chapter 3 amends FCA §1027 to require a hearing regarding the appropriateness of the removal in every instance where a child has been removed from his or her home, without a request by the parent under FCA

§1028. Chapter 3 does not amend FCA §1028. Under FCA §1028, a parent may still request a hearing for “good cause shown”, although there has been a prior hearing under FCA §1027.

10. Sections 1022(a)(ii) and 1027(a)(i) require a court to calendar hearings immediately and continue the hearing until a determination can be made regarding appropriateness of the removal, including determination of imminent risk, best interests, etc. Will this encourage or even allow for courts to order or sanction the removal on the first day of the hearing with a court order and then a week later determine imminent risk and best interests in a second issuance, thus failing the IV-E criteria? Could the new law actually encourage appropriate permanency and safety decisions but still cause (new) IV-E problems?

The language of both sections regarding calendaring of a hearing under FCA §1022 or §1027 is unequivocal that the hearing continue until there is a determination by the court and does not contemplate piecemeal consideration of the appropriateness of the removal, imminent risk, best interests or reasonable efforts to prevent the removal.

When a FCA §1022 hearing for a pre-petition order sanctioning removal of a child must be adjourned until the next day, if the LDSS is concerned that the child will be in imminent danger if the child remains at home overnight, a safety plan should be worked out to keep the child safe. However, if a safety plan that would allow the child to remain at home cannot be worked out, the LDSS should make an emergency removal of the child under FCA §1024.

### **'Date Certain' Permanency Hearings and Continuous Calendaring**

11. What does “date certain” mean? How does this affect permanency hearings?

The term “date certain” means 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. This is a change from current procedure where a LDSS is required to file a petition to be docketed and calendared for an available hearing date, which was picked by the court clerk within the general timeframe specified for that hearing. The Permanency Bill requires the court to set a date certain for each initial and every subsequent permanency hearing. The actual timing of the date certain is based on the standards set forth in FCA §1089 under the new Article 10-A:

Initial Permanency Hearing (Non-freed Child)

- Date of removal from home plus 60 days plus 6 months =  
**No later than 8 Months from removal**

Initial Permanency Hearing (Completely Freed Child)

- Immediately following an approval of a surrender or termination of parental rights disposition; or
- **No later than 30 days after the court hearing completely freeing the child**

Subsequent Permanency Hearings – Freed and Non-freed Child

- **No later than 6 months following the preceding permanency hearing**

The date certain also impacts when the LDSS must provide the permanency hearing report to the court, parent, law guardian and others 14 days before the date certain.

12. When must a permanency hearing be completed?

A permanency hearing should be commenced and completed on the date certain initially set by the court. However, in the rare instance that an adjournment is necessary, if the permanency hearing is not completed on the date certain, it must be completed within 30 days of that date.

13. If an adjournment is necessary, when is the next permanency hearing due?

The next permanency hearing must be scheduled no later than 6 months after completion of the last permanency hearing. However, if more than 30 days have passed since the date certain originally scheduled by the court for the permanency hearing, it is strongly recommended that the next permanency hearing be scheduled for six months from the initial date certain.

14. Will the continuous court calendaring include permanency hearings and extensions?

The continuous court calendaring provisions of the Permanency Bill will apply to permanency hearings and extensions of legal authority for:

- Children entering foster care as abused or neglected children pursuant to FCA Article 10; or
- Children entering foster care through a voluntary placement agreement (section 384-a of the Social Services Law) or a surrender (SSL §§383-c, 384); and
- Completely freed children in foster care pursuant to FCA Article 10 or by voluntary placement or surrender.

For children the court has determined are completely free for adoption, the continuous court calendaring provisions of the Permanency Bill will apply to permanency hearings but not to extensions of placement.

15. Are children placed in the custody of a relative or other suitable person under FCA Article 10 required to have permanency hearings?

The permanency hearing standards in FCA Article 10-A also apply to children placed into the direct custody of a relative or other suitable person pursuant to FCA Article 10. The initial permanency hearing is due no later than 8 months after the child's removal from home and at least every six months thereafter.

16. Are children placed under FCA Article 3 (JDs) or Article 7 (PINS) subject to the requirements of the new FCA Article 10-A?

The continuous court calendaring and the new permanency hearing standards do not apply to juvenile delinquents or PINS, unless a PINS or JD child has been determined by the court to be completely freed for adoption.

17. Is the "date certain" for permanency hearings different if the child is freed or not freed for adoption?

Yes, the standards for calculation of the date certain for the initial permanency hearing differs depending whether a child is completely freed or not.

See the answer to question #11 for the standards.

18. Can the court still set an earlier date for a permanency hearing under the new FCA Article 10-A?

The court has the authority to establish a date certain at an earlier date since the statute requires the permanency hearing be set "no later than" each specified time frame. However, the court may not set a date certain for a permanency hearing later than the time frames set forth in the answer to question #11.

19. At what point do we bring the SSL §392/Voluntary placement back for permanency hearing?

The Permanency Bill repeals SSL §392.

The new standards for permanency hearings for children voluntarily placed in foster care are set forth in FCA Article 10-A. The standards for a

voluntarily placed child are the same as a child who entered foster care as an abused or neglected child. See the answer to question #11 for the standards.

20. What are the expectations about presentation of evidence at permanency hearings—i.e. how extensive does a “hearing” have to be? Will DSS be expected to bear the burden of demonstrating the need for extension as well as some of the other findings?

Throughout the new §1089, it is clear that the LDSS must demonstrate the basis for the recommendations it makes regarding whether to keep a child in foster care, make changes to a visitation plan or a permanency goal, including the requirement to set forth the rationale for proposed changes, and therefore the LDSS bears the burden of proof. Certain people who are provided notice of the hearing must be afforded an opportunity to be heard. In addition, §1089(d) requires the court to make findings at the conclusion of the permanency hearing, upon the proof adduced, which means the evidence presented at the hearing. It is not sufficient for the findings and order to be based upon the parties’ consent on the record to the recommendations in the permanency hearing report.

21. What do I do if it is appropriate to return the child to his or her parents (i.e., situation at home greatly improved, parent ameliorated problem), but the next date certain for the permanency hearing is a long time from now? Can I discharge the child early?

There are several ways that a LDSS may plan and arrange for a child to return home before the next scheduled permanency hearing. For children in foster care subject to the new permanency hearing standards under FCA Article 10-A, after the initial permanency hearing held at eight months, the maximum time period before the next permanency hearing must be held is six months.

If the permanency plan is return to parent, at any permanency hearing a LDSS may request as part of its permanency plan and permanency hearing report that the court authorize the discharge of the child prior to the date certain for the next permanency hearing upon 10 days written notice to the court and law guardian [see FCA §1089(d)(2)(viii)(C)].

If the child can be returned home prior to the first scheduled permanency hearing or if the LDSS did not receive an order from the court at the permanency hearing authorizing discharge as noted above, the LDSS may make a motion to terminate placement and for approval of the discharge plan pursuant to FCA §1062 prior to the next scheduled permanency hearing.

22. How will the "No Reasonable Efforts" determinations be handled? Will a "Date Certain" be set for 30 days from the determination for the permanency hearing?

The requirement that a permanency hearing must be held within 30 days of a court determination that reasonable efforts to reunify a child with his or her parents are not required pursuant to FCA §1039-b was not amended by the Permanency Bill. However, there is nothing to prevent the court from setting a date certain in that time period.

23. When calculating the date certain for Freed Children: Does "TPR Disposition" mean determination from the bench or the execution of the written order?

The language requires that the date certain be set from the conclusion of the dispositional hearing at which the child was freed. If the court makes the determination from the bench, that would be the disposition. However, if there is a written decision by the court terminating the parental rights, the written decision should set the date certain. Since the court sets the date certain, the parties will be clear what that date is, either immediately following, or within 30 days.

24. When a TPR is pending, should the permanency hearing be done during the TPR or wait until after the child is freed so the case gets into that cycle (assuming no federal Title IV-E issues)?

The permanency hearing should be held during the pendency of the TPR hearing.

25. Once a child is freed, what happens to the previously scheduled date certain permanency hearing based upon the placement prior to freeing?

The court should administratively delete the previously established date certain, based upon the new freed child permanency hearing cycle.

26. What if a youth was in LDSS custody under Article 10 and then is adjudicated a PINS or JD – which time frames apply?

In relation to permanency planning for a youth who a court has determined is freed for adoption, whether a PINS or JD, the permanency hearings must follow the timing under new Article 10-A. In addition, if a youth has not been freed for adoption, different jurisdictions treat these youth differently. However, good practice would dictate that the permanency hearings be combined to facilitate better permanency and discharge planning for the youth.

27. Does setting a date certain for a permanency hearing have IV-E implications? How?

The Title IV-E eligibility standards for timely court determinations of reasonable efforts to finalize a child's permanency plan or to enable a child to safely return home have not changed.

It is anticipated that the setting of the date certain within the timeframes of the new Article 10-A requiring more frequent permanency hearings will support compliance with Title IV-E eligibility requirements because a LDSS must address the reasonable efforts made to finalize the child's permanency plan or to enable the child to safely return home if the goal is reunification, in the permanency hearing report and at the permanency hearing on the date certain. Since Title IV-E requires that a reasonable efforts determination be made at least every 12 months, the more frequent permanency hearing requirements will enable this to occur.

28. Please clarify when petitions must still be filed and when they aren't needed or permitted.

A petition is still necessary to commence an abuse or neglect or termination of parental rights proceeding or to commence a proceeding for approval of a voluntary placement agreement or a surrender. If a child who enters foster care through one of these proceedings remains in foster care, only a motion, which may be served by regular mail, is required to bring a case back before the court while jurisdiction continues. Petitions will no longer be required for permanency hearings held pursuant to the new FCA Article 10-A.

For PINS and JD youth, petitions will continue to be required for all proceedings, including extensions of placement. If a court has determined that a PINS or JD youth is freed for adoption, a petition will not be required to commence a permanency hearing.

### **Placement**

29. In the old FCA §1055(b)(i) the "date a child is considered to have entered care" required determination of the earlier of the date of fact finding or 60 days after the date the child was removed. Do we still have to invoke that rule to determine when a child entered foster care?

The term "date a child is considered to have entered foster care" will no longer be applied to determine the time frame for permanency hearings. The date certain must be set no later than 8 months after the child was removed from his or her home. The date of removal of the child from his or her home is a key element in calculating the date certain for the initial

permanency hearing of a non-freed child (60 days after removal + 6 months).

The date of fact-finding is not an element in that formula.

30. Are lapsed placements still an issue under the new legislation?

No. With the continuous jurisdiction provisions of the Permanency Bill that provide for legal authority to continue until the completion of the next permanency hearing, it is anticipated that lapsed placements will no longer be an issue for Article 10 or voluntary placements. However, it may still be an issue with non-freed juvenile delinquents and PINS.

31. The statute says that placement may only be until the date of the completion of the permanency hearing. So, do we place until 30 days after the date certain for the PH?

The Permanency Bill requires placement until completion of the next permanency hearing. It does not contemplate that a date be set for placement to lapse.

32. Is the 30 days extension statute still applicable? Please explain how (if) extensions have changed.

Legal authority will continue until the court authorizes the termination of legal authority at the completion of a permanency hearing. There is no longer authority or need for a temporary extension of placement.

33. What happens if the permanency hearing is not completed in 30 days?

Under the changes to the court process in the Permanency Bill, this should occur only in the most rare case, if at all. However, if it does occur, the court would retain jurisdiction over the case and legal authority will not lapse. There will not be Title IV-E ramifications for lapse of legal authority or with securing a reasonable efforts determination, as long as a reasonable efforts determination is obtained within the 12-month federal time frames. However, if more than 30 days have passed since the date certain originally scheduled by the court for the permanency hearing, it is strongly recommended that the next permanency hearing be scheduled for six months from the initial date certain.

34. What is an Article 6 placement and does it change under the Bill?

A FCA Article 6 placement is a placement of a child into the legal custody of a person. Article 6 placement orders are not time limited or subject to permanency hearings. A child placed under Article 6 in the custody of a

person is not in foster care. There are no changes to the legal requirements of Article 6 placements under the Permanency Bill. However, the Permanency Bill does allow the court to make an Article 6 placement in an Article 10 proceeding, without the necessity of commencing another proceeding.

35. Can you have a child placed under Article 6 and Article 10 concurrently?

No. However, if a child is placed in the custody of a relative or other suitable person under Article 6, a court may still order supervision of the relative or other suitable person under FCA §1054.

36. What requirements apply to Article 10 direct placements?

The requirements for case recording, case planning, case management, assessment and service planning (FASP), service plan reviews and the permanency hearing provisions of the new FCA Article 10-A apply to children directly placed with relatives or other suitable persons pursuant to sections FCA §§1017 or 1055.

These requirements do not apply to Article 6 custody placements.

## **Article 10**

37. §1017 allows the court to place the child with another suitable person (e.g. the person who found the abandoned baby who is not a licensed foster parent nor related or the unrelated godmother) but the state regulations do not permit such a placement. Which applies?

An amendment to statute in effect repeals any contradictory regulations. OCFS is currently reviewing the regulations that must be amended or repealed, based upon the provisions of the Permanency Bill. However, currently, 18 NYCRR 443.7 authorizes the certification of a non-relative foster home on an emergency basis where the non-relative has a significant prior relationship with the child's family.

38. The placement sections in Article 10 have taken out the references to the visitation plan and service plan reviews being set forth in the court order - that language was all moved to the permanency hearing section (FCA §1089). Does that mean we do not have to provide the parents with the visitation plan in the court order or notice of the SPRs?

No. A parent must be provided with written notice of the plan for providing visitation with his or her child and must be provided with a copy of the court's order. The reference in FCA §1089 makes that clear. This was an

unintentional deletion from FCA §1055. The requirement for notice of the SPR and other rights of parents regarding the SPR process has been moved to the SSL §409-e.

39. In the placement sections of Article 10, it only refers to placement and permanency hearings, but really all placement orders also contain orders for services and supervision. Is the supervision order under FCA §1057 subject to the ongoing calendaring provisions of the Permanency Bill?

A placement order that includes a supervision order is subject to the ongoing calendaring provisions. Although FCA §1057 permits an order of supervision for up to one year, there is nothing in that section that would prohibit the order of supervision being co-terminus with the placement order – also ending at the completion of the permanency hearing, unless extended. However, a supervision order with no placement would have just the statutory end date - for one year or less, unless a petition to extend is filed.

40. FCA 1017 that now allows for an Article 6 placement --what standards, what duration, apply? Does Bennett v. Jeffreys still apply?

The change to allow an Article 6 placement from Article 10 was intended to simplify this process for courts and families, by not requiring another petition under Article 6 to be filed. However, it was not intended to overturn or delete any requirements for proof, the requirement that extraordinary circumstances exist to allow the court to place a child with a non-parent, or that the court determine that such a placement is in the child's best interests, if extraordinary circumstances exist. As with any Article 6 custody placement, the order is in effect until a later order of the court modifies the custody, based upon proof of a change of circumstances.

### **Discharge**

41. What do I do if it is appropriate to return the child to parents (i.e., situation at home greatly improved, parent ameliorated problem), but the next date certain for the permanency hearing is a long time from now? Can I discharge the child early?

There are several ways that a LDSS may plan and arrange for a child to return home before the next scheduled permanency hearing. For children in foster care subject to the new permanency hearing standards under FCA Article 10-A, after the initial permanency hearing held at eight

months, the maximum time period before the next permanency must be held is six months.

If the permanency plan is return to parent, a LDSS may request at any permanency hearing, as part of its permanency plan and permanency hearing report, that the court authorize the discharge of the child prior to the date certain for the next permanency hearing upon 10 days written notice to the court and law guardian [see FCA §1089(d)(2)(viii)(C)].

If the child can be returned home prior to the first scheduled permanency hearing or if the LDSS did not receive an order from the court at the permanency hearing authorizing discharge as noted above, the LDSS may make a motion to terminate placement and for approval of the discharge plan pursuant to FCA §1062 prior to the next scheduled permanency hearing.

### **Family Assessment Service Plan (FASP)**

42. Are the FASP and the permanency hearing report the same thing? If not, what are the differences?

The FASP and permanency hearing report are two separate documents with different purposes. The FASP guides caseworker decision-making, documents the family strengths and needs and is the blue print for the actions and services that the agency and the family will follow to achieve timely permanency. The requirements for the FASP are detailed in OCFS regulations (18 NYCRR Part 428). The FASP is currently supported in CONNECTIONS (Build 18) and is reviewed periodically or as status changes occur. Based upon the changes to SSL §409-e, with Build 18.7, the first full reassessment after CID will be due at 210 days, rather than 180 days. A periodic FASP will be required every six months after that for the life of the case, regardless of any subsequent placements. Applicable regulations are also being reviewed and revised as necessary.

The permanency hearing report provides the court with the information needed to make decisions regarding the safety and well being of the child, the family's progress, the LDSS or voluntary agency provision of reasonable efforts, the appropriateness of the plan, and LDSS or voluntary agency and family actions relevant to achieving timely permanency. The requirements for the permanency hearing report are detailed in FCA §1089. The report must be distributed to certain required individuals and entities, including the court, 14 days in advance of the date certain for a permanency hearing. Unless a judge specifically requests additional information, the FASP will not be provided to the court.

OCFS collaborated with the Office of Court Administration, and gathered input from a number of LDSS to develop a series of templates for the required permanency hearing report and notice to be used statewide. These templates are available in three versions: for multiple children in the same family who are not freed for adoption, for an individual child not freed for adoption, and for an individual child freed for adoption. Information from FASPs, where applicable, will be able to be copied and pasted from a FASP into a template. A guide for workers is being developed to assist and help workers “crosswalk” the information, wherever possible. It is anticipated that the use of these templates is temporary and that shortly after the implementation of Build 19, CONNECTIONS will generate the permanency hearing report, customized for the child’s age and permanency planning goal. OCFS recognizes that the information recorded in both the FASP and permanency hearing report is quite similar, so the plan is to pre-fill much of the data on the permanency hearing report from the most recently completed FASP.

43. If a FASP was recently completed, do I have to do another FASP within 30 days of removal?

Consistent with current requirements, a plan amendment to a previously existing FASP must be completed within 30 days of removal of a child from his or her home. A type of Plan Amendment is available to meet this requirement for children removed to foster care. A new Plan Amendment will be available with Build 18.7 for children removed from home and placed directly with a relative or other suitable person under Article 10. These Plan Amendments include an assessment of the child specifically related to the child’s entry into foster care or direct placement with a relative or other suitable person (under FCA Article 10) and relevant foster care issues and the creation of a visiting plan. The Plan Amendment must also update the Service Plan for the child and family. If a periodic FASP is available in this time frame, the requirements may be met in that FASP.

44. Define “being considered for placement into foster care” for the purpose of determining when a FASP is due.

“Considered for placement” means eligible for mandated preventive services based upon programmatic eligibility, determined in accordance with 18 NYCRR 430.9. This term was not added or amended by the Permanency Bill. The CID and timing of the FASP for these cases remains the same, except as previously noted, the first full reassessment after CID will be due at 210 days, rather than 180 days.

45. Where a preventive services case child has now been removed and entered foster care, if it is not within the timeframes, how can one launch the FASP?

Consistent with current requirements, a plan amendment to a previously existing FASP must be completed within 30 days of removal of a child from his or her home. A type of Plan Amendment is available to meet this requirement for children removed to foster care. A new Plan Amendment will be available with Build 18.7 for children removed from home and placed directly with a relative or other suitable person under Article 10. These Plan Amendments include an assessment of the child specifically related to the child's entry into foster care or direct placement with a relative or other suitable person (under FCA Article 10) and relevant foster care issues and the creation of a visiting plan. The Plan Amendment must also update the Service Plan for the child and family. If a periodic FASP is available in this time frame, the requirements may be met in that FASP.

46. WMS cases are reauthorized every 6 months. Since the new FASP time frames are no longer in synch, is some provision being made to adjust this?

The requirements for periodic FASPs will remain the same based upon the established CID, except as previously noted, the first full reassessment after CID will be due at 210 days, rather than 180 days. The new assessment/service plan requirements for 30 days and 90 days from removal are being handled by types of Plan Amendments or directly in the periodic FASP, if available for launch. If the 30 day or 90 day requirement needs to be met prior to the date for submission of the periodic FASP, the required information can be completed and approved timely and separately through a plan amendment.

47. If a child was already in foster care and returned home, but returns to foster care placement at a later date, is Day 1 for the FASP the date of the most recent foster care placement, or the original date the child was placed in foster care? Presently the CID date is calculated based on the original case.

If the case remains continually opened, CID will remain the same and the new requirements for children who have been removed will be met as described in the answer to Question # 43. If the case was closed after the child returned home, a new case opening must be done with a new CID established.

### **Mandated Reporters**

48. What does the language that amends SSL §415 regarding mandated reporters and the provision of records mean?

Chapter 3 provides that:

Notwithstanding the privileges set forth in article forty-five of the civil practice law and rules, and any other provision of law to the contrary, mandated reporters who make a report which initiates an investigation of an allegation of child abuse or maltreatment are required to comply with all requests for records made by a child protective service relating to such report, including records relating to diagnosis, prognosis or treatment, and clinical records, of any patient or client that are essential for a full investigation of allegations of child abuse or maltreatment pursuant to this title; provided, however, that disclosure of substance abuse treatment records shall be made pursuant to the standards and procedures for disclosure of such records delineated in federal law.

This language is not intended to be an expansion of a mandated reporters current obligations under the existing language of SSL §415. Under current law, if a mandated reporter has reasonable cause to suspect that a child coming before him or her in his or her professional/official capacity is an abused or maltreated child, he or she must immediately report such suspicion to the Statewide Central Register of Child Abuse and Maltreatment. SSL §§413, 415.

Since the passage of the federal HIPAA, confusion has arisen regarding the obligation of a mandated reporter to provide copies of written records that underlie the report. The intent of the amendment is to make clear that the mandated reporters obligation also extends to the provision of the records necessary to investigate the report, as has always been the case.

49. Regarding the requirement that mandated reporters provide records needed for a CPS investigation irrespective of HIPAA constraints: Does this only apply when the records are controlled by the mandated reporter who is the source of the report, or any mandated reporter that has had contact with the subject family?

The amendment to SSL §415 only applies to the records of the mandated reporter who was the source of the report of suspected child abuse or maltreatment. However, for a mandated reporter employed by an institution, this requirement applies to all of the records of the institution that pertain to the report regardless of who actually made the report. Additionally, the records that CPS requests should be limited only to information that directly pertains to the report itself.

50. Who decides what information pertaining to the report is “essential for a full investigation” and therefore must be provided to CPS: the mandated reporter or CPS?

In the first instance, the mandated reporter to whom the request is directed makes the determination of what information is essential. If CPS

believes that the mandated reporter has additional essential information pertaining to the report, CPS should ask the mandated reporter for the additional records and attempt to come to agreement regarding any additional records. If CPS and the mandated reporter cannot come to agreement and CPS disagrees with the mandated reporter's rationale for why the records are not relevant to the report, CPS may seek a court order pursuant to CPLR Article 31 and SSL §415 directing the mandated reporter to produce the essential information.

51. Do the amendments to SSL § 415 apply where a mandated reporter (e.g. mental health therapist or domestic violence service provider) makes the report based on information disclosed by a parent who is not alleged to be the subject and the mandated reporter only has additional information concerning such allegedly non-offending parent?

Where the reporter has no other records or other additional information pertaining to the allegations contained in the report other than the portion of the records relating to the information disclosed by the parent not alleged to be the subject, the amendments to Section 415 of the SSL would not apply. Nothing in the amendments suggests that the reporter provide information about, for example, the mental health services being received by the non-subject parent, unless that information is determined by the reporter to be essential in supporting the information contained in the report.

52. Must the mandated reporter receive written consent from the parent(s) in order to provide CPS with the additional essential information?

The statutory amendments do not require written consent and are intended to promote CPS getting the needed supplemental information that supports the initial report. However, good practice would dictate seeking the consent, or notifying the parent(s) that such essential information is being (and is required to be) shared, unless the child's health or safety would be put at risk by notifying the parent(s). If the parent does not consent, however, the mandated reporter must still provide the information.

53. What about HIV Records?

§2782(7) of the Public Health Law, which pertains to confidential HIV related information, specifically provides that nothing in that section limits a person's or agency's responsibility or authority to report, investigate, or redisclose, child protective services information. Under the amendment to SSL §415, hard copies of the records relevant to the report must be provided. For example, where a child is HIV positive and medical neglect is alleged based upon the family's failure to obtain appropriate medical

treatment for the child, the child's medical records would be relevant to the report, and would be required to be released.

### **Missing Parent and Non-Respondent Parent**

54. What are the new requirements for non-respondent parents? Why the new emphasis on non-respondent parents? What is good practice in continuing to inquire and identify?

When the court removes a child from his or her home pursuant to FCA Article 10, FCA §1017 requires the court to direct the LDSS to conduct an immediate investigation for relatives of the child. The LDSS must inform the court whether there are relatives who are willing and able to either provide direct care and custody of the child or become the child's foster parent.

The Permanency Bill amended FCA §1017 to expressly require the LDSS to make clear that the immediate investigation includes location and evaluation the child's non-respondent parent. This is supportive of the work of OCFS and many LDSS to improve their parent location efforts early in the life of a case so that permanency for a child can be expedited. In cases where paternity or maternity can be established, caseworkers need to quickly identify whether the non-respondent parent or his or her extended family can be a permanency resource for the child as a permanent placement or whether any extended family member(s) can be approved as foster parent(s) for the child.

The Permanency Bill also requires the LDSS to record in the child's uniform case record information regarding the non-respondent parent, which must include the person's name, last known address, social security number, employer's address and any other identifying information to the extent known as the information is identified. The Permanency Bill also requires the recording of such information when a surrender or a voluntary placement is executed.

Please note that Chapter 671 of the Laws of 2005 also makes amendments to FCA §1017 with regard to the investigation for non-respondent parents and other relatives. Although the provisions of Chapter 671 take effect on December 15, 2005, there is a proposed chapter amendment that will extend the effective date, which should be passed by the Legislature in the early part of the new legislative session.

55. What is required to prove that a social services official has tried to locate the absentee parent?

Efforts to locate the non-respondent parent must be documented in the child's uniform case record. Such efforts to locate the non-respondent parent may include, but are not limited to, asking the respondent parent, child, other family member and other persons familiar with the family for information about the child's parent; asking the child where age and developmentally appropriate; and/or using the phone book and Internet for out of town locations.

Other good practice steps that should be taken include:

- Check CCRS, WMS and CONNECTIONS.
- Check Prison Locator Service System (518-457-0034), Internet searches, contact law enforcement agencies such as police departments, probation departments, county jails, NYS Department of Corrections, NYS Parole, and Sex Offender Registry.
- Send a letter to the last known address. If that address is not current, it may be returned with a forwarding address. Send a postal clearance form to the post office where the absent father (parent) last resided.
- Contact the Child Support and Enforcement Unit (CSEU) to request a federal parent locator search through the FPLS. CSEU may also be contacted to determine if the absent parent has paid any support for the child in question and/or to obtain his/her address and information regarding other children this individual may have. An ADM will shortly be available regarding the use of the FPLS.
- Check the Putative Father Registry to access the name and address of a father of a child born out-of-wedlock so that he can be notified of the placement of his child in foster care, permanency hearing dates certain, and be a part of the child's placement and planning process.

Please also refer to 05-OCFS-INF-05 Locating Absent Fathers and Extended Family Members Guidance Paper for more detailed information.

56. What if I cannot find the other parent?

The efforts made to locate the non-respondent parent must be documented in the child's uniform case record. In addition, good practice would dictate that this is an on-going investigation, such that if new sources of information regarding a non-respondent parent are found, they should be explored immediately. The LDSS also still must try to locate

and evaluate other relatives, who may also be sources of information regarding the non-respondent parent.

57. Does the identifying information of non-respondent parents, once recorded on a UCR or FASP, need to be recorded in each subsequent FASP?

Once the child is removed and placed and an initial investigation has been made and recorded, there is no need to perform a search and evaluation of relative suitability in each subsequent FASP. However, if new information is received regarding a child's non-respondent parent, it should be recorded in a subsequent FASP and/or Progress Notes. Build 19 will have specific functionality for adding information on absent parents and relatives.

58. What if there is no cooperation in naming this person?

If the respondent parent refuses to identify the non-respondent parent, the LDSS must use information from other sources such as other family members, the child, or government databases to identify the non-respondent parent. The refusal to provide information regarding any non-respondent parent is not a basis for non-approval of a surrender or voluntary placement agreement.

### **Abandoned Infants**

59. How does the Permanency Bill impact permanency for abandoned infants?

It should speed permanency for these children. The definition of aggravated circumstances has been expanded to cover where an infant five days old or less has been abandoned and the court finds that the parent's intent was to wholly abandon the child and that the child be safe from physical injury and cared for in an appropriate manner (as required by the Abandoned Infant Protection Act). The LDSS may make an application to a court under FCA §1039-b to be relieved of the requirement to make reasonable efforts to reunify the family, which includes the diligent search to find the parents, in these very limited circumstances.

### **Default Judgments**

60. What is a "default judgment"? Is it a new definition under this legislation?

A default judgment is the legal term for where a court enters judgment against a respondent who has failed to defend against a claim. In the context of an Article 10 proceeding, a default judgment is where the

respondent failed to appear at the fact-finding hearing regarding an Article 10 petition and the court makes a finding of abuse or neglect in the absence of the respondent. This is not a new definition or process under the Permanency Bill.

### **Continuing Representation for Parents**

61. Does the "Continuing Representation" system apply in Court-Mandated Preventive Services cases?

Under New FCA §1090(b), once an attorney has been appointed to represent a respondent parent, the representation continues without further court order until final determination of an appeal, approval of a surrender or the expiration of the time to take an appeal of an order of disposition against the respondent parent. If an order of disposition of an Article 10 proceeding either returned a child home or maintained the child in his or her home with mandated services being provided, the respondent parent's representation would continue until 30 days after service of the order, unless an appeal was filed. However, if no Article 10 proceeding has been filed, there is no right to representation under FCA §262.

### **Foster Parents & Adoptive Parents**

62. Why are LDSS required to provide notice of permanency reviews to former foster parents?

The Permanency Bill in section 1089(b)(2) of the Family Court Act expressly states that "notice of the permanency hearing only shall be provided to a former foster parent in whose home the child previously had resided for a continuous period of twelve months in foster care, if any." This means if the child had been in any foster home for more than 12 consecutive months, the person or persons who had provided such care must be given notice of the permanency hearing.

Children need a support system, especially children in foster care. Former foster parents may continue to provide a supportive relationship and possibly even become an alternative permanency resource. It is the intent of the law that no possible supportive relationship be overlooked when the court must determine if the plan presented by the LDSS meets the child's need for timely permanency. If a placement lasted 12 months or more, it is likely that at least for some portion of that time, the child and the foster parent developed a relationship. Therefore, by sending them a notice, the LDSS is providing the former foster parent with an opportunity

to consider if they are willing and able to play a supportive role in that child's life at this time.

The Permanency Bill requires that notice of the permanency hearing go to the former foster parents but not the permanency report itself.

There are no exceptions regarding the provision of notice to a person who was the foster parent for the child for a continuous period of 12 months, unless an application is made to the court to be relieved of the obligation to provide notice. See the answer to Question # 66.

63. Does this apply to the current foster parent or include all past foster parents who meet the 12-month time requirement?

The current foster parent is entitled to notice of the permanency hearing and the permanency hearing report, irrespective of how long the child has been residing in such foster home. The current foster parents, as the child's temporary caregivers, are notified of the permanency hearing, provided with a copy of the report that is sent to the court, and informed that they are a party to the proceeding. This means that they can participate in the proceedings, provide information, be asked questions by the judge, ask questions about the plan, etc.

Only the notice of the permanency hearing must be provided to all former foster parents who satisfy the criteria referenced in the answer to Question #62. Receiving notice is not the same thing as being invited to participate. Should a former foster parent have renewed interest in the child's well-being and future, he or she could contact the caseworker and express that interest so appropriate steps may be taken to re-introduce him or her into the child's life if that is likely to be in the child's best interests. Should a former foster parent decide to attend the hearing, since he or she is not a party to the proceeding, he or she may not participate in the proceedings as a party. However, if the former foster parent has information to offer the court relevant to the permanency hearing, the former foster parent must be provided an opportunity to be heard. If there are issues that are confidential, the court should be advised and the former foster parent asked to leave the courtroom during that portion of the proceeding.

64. If the child has been returned home and removed on a new petition, are the former foster parents from the last placement still entitled to notice if at the point of replacement the child did not return to his/her home?

Yes, as long as the former foster parents meet the standards set forth in the answer to Question #62 of this section.

65. If the foster home is closed, is the agency still obliged to send those former foster parents the permanency hearing report?

Former foster parents DO NOT receive a copy of the permanency hearing report, just notice that a hearing is to be held. A former foster parent with whom a child has previously resided for 12 months or more whose home is now closed are entitled to receive notice of the upcoming hearing. It is not the status of the foster home that is important, but the possibility of a positive relationship and permanency resource for the child that is the rationale for providing them with notice.

66. When a previous foster parent may pose a safety or well-being risk to the child, may the current foster parents' names and address, child's school or place of employment and other identifying information be redacted from copies/originals of the permanency hearing report sent to a previous foster parent?

The former foster parent is only entitled to the notice of the permanency hearing, not the permanency report. No identifying information about current foster parents, parents or the addresses of either would be included on the notice to the former foster parent. There are several reasons why the LDSS may believe that it is inappropriate to notify a former foster parent of an upcoming hearing, including the maltreatment of the child, a damaging emotional relationship, etc. If the LDSS has safety concerns regarding the former foster parent, then the LDSS should make a motion to address those concerns with the court and request the court to relieve the LDSS of the obligation to provide notice.

### **Permanency Hearing Report**

67. Will templates be created for the notices and permanency hearing reports?

OCFS collaborated with the Office of Court Administration, and gathered input from a number of LDSS to develop a series of templates for the required permanency hearing report and notice to be used statewide. These templates are available in three versions: for multiple children in the same family who are not freed for adoption, for an individual child not freed for adoption, and for an individual child freed for adoption. Information from FASPs, where applicable, will be able to be copied and pasted from a FASP into a template. A guide for workers is being developed to assist and help workers "crosswalk" the information, wherever possible. It is anticipated that the use of these templates is temporary and that shortly after the implementation of Build 19, CONNECTIONS will generate the permanency hearing report, customized for the child's age and permanency planning goal. OCFS recognizes that the information recorded in both the FASP and permanency hearing report

is quite similar, so the plan is to pre-fill much of the data on the permanency hearing report from the most recently completed FASP.

68. What is necessary to fulfill the requirement that the permanency hearing report must be a "Sworn Report"?

As previously required for a Permanency Hearing Petition, a simple verification, sworn before a Notary or Commissioner of Deeds by the caseworker who prepared the report is sufficient.

69. With regard to the requirement that the permanency hearing report be sent to the birth parents, may an agency redact the identity and/or address of a foster parent, the child's school name or other identifying information when a birth parent poses a risk to the child and/or foster parent?

No addresses or school names will be included in the permanency hearing report or notice to parties.

70. We're particularly concerned about what is required in the reports and all the notice. How do you tell the judge what he or she needs to know – for example, Mom's not absorbing information in the parenting classes, and child is doing poorly in foster home, and send copies to both mom and the foster parent?

Open and full disclosure to parents, foster parents and the courts is necessary to achieve safety, well-being and permanency for children in foster care. Whether during assessment and service planning, at service plan review meetings, or court hearings, objective, behaviorally descriptive and factual information is vital to all affected parties. None of the information in the permanency hearing report should be a surprise to the parent or current foster parent. The information should be presented dispassionately, impartially, and combine identification of strengths as well as problems or areas of concern.

71. When is the court supposed to receive a copy of the permanency hearing report?

New FCA Article 10-A requires the permanency hearing report to be filed with the court before the date certain permanency hearing. It is recommended that the report be filed with the court at the same time it is sent to the parties to avoid confusion, i.e., 14 days before the date certain set for the permanency hearing.

72. What should a parent's attorney or law guardian do if they have not received the permanency hearing report and notice and the date certain is less than 14 days away?

The law guardian or parent's attorney should immediately contact the LDSS attorney to inquire regarding the report. If no report is forthcoming, the law guardian or parent's attorney should make a motion for a court order requiring the report to be filed. It is expected that the parties will come to the date certain permanency hearing fully prepared to proceed with the hearing.

73. How is the LDSS supposed to get the information to complete the permanency hearing report regarding Article 10 direct placements with a relative or other suitable person?

SSL §409-e was amended in the Permanency Bill to make clear that uniform case recording and service plan reviews are required for these children. In addition, since the LDSS is likely providing supervision and services to the child and the relative or person with whom the child is directly placed, the information necessary for the report should be available.

74. Do all recipients need sworn copies or can e-mailed copies suffice?

Only the copy filed with the court must be sworn. There is no prohibition against emailing the reports, if the parties agree to receive reports by this method. If email is used, precautions must be taken to protect the confidentiality of the report. In addition, to fully comply with the statutory requirement, copies must also be mailed by regular mail.

75. How will the LDSS "prove" that the notice of permanency hearing and permanency report were mailed timely and to the right address?

A new form has been developed to be submitted to the court only with the sworn report. It will list the name and address of each person or entity to which the report was mailed.

### **New Permanency Goal and "Independent Living"**

76. What is required with the new permanency goal of "Another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child"?

The goal requires that every child who leaves foster care is connected to an adult permanency resource, a caring committed adult with whom the youth has established a relationship and who has agreed to provide guidance and assistance to the youth as the youth makes the transition from foster care to self-sufficiency. The resource person may be a

relative, a former foster parent, teacher, coach, or caseworker or any other appropriate person who is willing to act as a resource.

Parents can also be included here. Years may have passed since the child was removed and freed – parents' circumstances can change, and as children grow older they may be able to cope with their parents' issues. A planned discharge with a safe connection to a parent is a vast improvement over a child who goes AWOL and back to the parent with no guidance.

77. Can I still use "independent living" as a permanency goal? If not, what is the acceptable plan? Please describe.

No, independent living is not an acceptable permanency goal and may not be included as the goal for a child on the permanency hearing report. Independent living is a series of services, not a permanency goal. The new permanency goal of "another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child" should be used, so long as a compelling reason is documented why one of the other permanency goals would not be in the best interests of the child.

### **Educational Requirements**

78. Do the new educational requirements apply to all children in indicated CPS reports, or just to those in foster care?

Under the Permanency Bill, a LDSS must plan and report the steps taken to enable the prompt delivery of appropriate educational services for all foster children and children in direct placements under Article 10 with a relative or other suitable person, except juvenile delinquents or PINS who are not completely freed [FCA § 1089 (c)(2)(iii), (c)(5)(iv)]. The educational requirements in the Permanency Bill stem from current requirements under state and federal education laws. For example, under the Child Abuse Prevention and Treatment Act (CAPTA), a LDSS must refer for early intervention services all children under the age of 3 who are involved in an indicated report of abuse or neglect. This referral requirement applies to all children, regardless of whether they are in foster care or whether they entered foster care based upon Article 10 or a voluntary placement agreement. The Permanency Bill requires the LDSS to document its efforts to plan and arrange for appropriate educational services in the child's permanency plan and report, which, if appropriate, includes the early intervention referral of a child under the age of 3 who was involved in an indicated report of abuse or neglect. For more information regarding the early intervention referral requirement see

“Referrals of Young Children in Indicated CPS Cases to Early Intervention Services” 04-OCFS-LCM-04.

79. Are there new requirements in the Permanency Bill regarding children who may be eligible for Pre-K?

Pursuant to the language in FCA §1089(c)(2)(iii)(B), where pre-kindergarten is available, and the child is eligible, the LDSS must take steps to enroll the child in Pre-K, and detail the steps taken to the court. A child who will turn age 4 before December 1<sup>st</sup> is eligible for Pre-K enrollment. If Pre-K is not available in the applicable school district, the LDSS will be required to report that Pre-K is not available.

### **18-21 Year Olds and Permanency Hearings**

80. Which 18–21 year olds are now required to have permanency hearings?

All youth in foster care between the ages of 18 and 21 who have consented to remain in foster care, who were placed under FCA Article 10, SSL §384 or 384–a or who are completely freed for adoption will be subject to the permanency hearing standards of the new FCA Article 10-A.

81. Regarding the 18-21 year olds, what about the youth who are AWOL and not available to consent to continue foster care?

Under prior law and under the Permanency Bill, a youth’s consent is required to remain in foster care after reaching the age of 18. The requirement for consent does not preclude a LDSS from requesting the approval of a permanency plan that extends placement, absent the AWOL foster youth’s consent. However, it is not clear if the court would approve such a plan. This may be an example where the court may use the 30-day period to complete a permanency hearing to encourage further efforts to locate the AWOL youth.

### **Court Orders**

82. Will attorneys continue to prepare and submit Orders following permanency hearings for “freed” children?

If the local practice has been that the attorneys prepare and submit the orders following permanency hearings for freed children, there is no requirement for change in that practice under the Permanency Bill.

83. Can a court still require a LDSS to submit a Progress Report?

Yes, there remains specific authority for a court to require submission of progress reports under new FCA Article 10-A.

### **Conditional Surrenders**

84. What changes are being made to Conditional Surrenders?

The Permanency Bill makes significant changes to Conditional Surrenders. A mechanism is provided to allow for post-surrender and post-adoption enforcement of the terms of a conditional surrender providing for birth family contact, if the court determines that such contact is in the best interests of the child.

The Permanency Bill also changes who may be named in a conditional surrender that provides that a particular person will adopt a child to permit certified or approved foster parents and persons who have been approved as adoptive parents to be named in the surrender.

85. What changes are being made regarding siblings and Conditional Surrenders?

The provisions regarding post-surrender or post-adoption contact specifically reference continued contact with siblings, as one option. Although OCFS standards and policy provide that siblings must be placed together unless placement is determined to be detrimental to the best interests of the siblings, there are times when this is not possible. If a youth is over age 14, he or she must consent to the contact agreement.

86. Regarding post-adoption contact agreements, how do we deal with confidentiality issues, such as the names of adoptive parents on adoption orders and with respect to the court-ordered post-adoption contact agreement itself?

The court approving the adoption should issue a separate order incorporating the terms and conditions of the agreement for contact.

87. It is not clear in the conditional surrender language if the Judge who finalizes the adoption must ALSO agree to the conditions/contact agreement - clearly the Judge taking the surrender does but what if a different Judge does the adoption? Is that Judge also required to do a best interests review for the terms to be enforceable after the adoption is finalized?

Since the judge that approved the surrender has already approved the conditions/contact agreement, it is the law of the case. There is no need for the judge in the adoption proceeding to go through a best interests determination regarding the previously approved conditions.

88. What happens in enforcement cases where there was no law guardian at the time of the surrender - SSL does not say that a court must appoint a law guardian whenever a surrender is being done - not all children being surrendered will be in foster care.

The court should appoint a law guardian if the proceeding is to approve a conditional surrender with a post-adoption contact agreement. If the court does not appoint a law guardian on its own, the LDSS should ask for a law guardian to be appointed.

### **Surrenders**

89. What is the impact of having only one parent surrender?

If there is another parent whose consent to the child's adoption is required, the impact of only one parent signing the surrender is that the child is not completely freed for adoption.

### **Legally Free**

90. What does legally free mean under bill?

This means, that for a particular child in foster care, there is no person whose consent to the adoption of the child is required pursuant to DRL §111. If a child in foster care has two parents whose consent to the child's adoption is required and one parent signs a surrender, for example, the child is not completely legally freed until the other surviving parent's rights have been terminated or surrendered.

### **Conferencing and Mediation**

91. In FCA §1018, what is meant by "conferencing"? Can it be a family meeting that the LDSS conducts separate from the court?

The reference in FCA §1018 to conferencing and mediation is very broadly written to include use of conferencing or mediation to "further a plan that fosters the child's health, safety and well-being" and "may involve interested relatives or other adults who are significant in the life of a child". A family meeting that the LDSS conducts separate from the court would certainly fit within this broad definition.

92. In section 1018, what is meant by "mediation"?

Mediation is a more formalized approach to alternative dispute resolution that, in most instances, utilizes a trained neutral mediator to facilitate the parties attempt to reach agreement.

### **CONNECTIONS Issues**

93. Will "Build 18" be modified to support changes created by the legislation? "Build 19"?

Staff have examined the design of Build 18 and identified areas that need to be modified so that CONNECTIONS can continue to be effective in supporting case management, assessment and service planning. We anticipate that CONNECTIONS will have modifications complete by the date of implementation (December 21, 2005). The design of Build 19 will be enhanced to support the Bill as well. After Build 19, CONNECTIONS will generate the permanency hearing report.

### **Claiming**

94. Currently, if a child is coded dually eligible (IV-E and EAF) and a petition is entered into CCRS but no court order, the child is claimed EAF and not NR through the BICS system. Under the new Permanency Bill, the petition is not needed and the court schedules a "date certain". If the court order is not received and there is no petition (like the 60 day after freeing orders), how will the system know to claim for EAF if there is a delay in producing/signing court orders?

When a child is first removed from home, an Article 10 petition must still be filed. Once a hearing is held regarding the removal, the court retains jurisdiction and continuing legal authority over a child. At that time, a date certain is set for the permanency hearing, for which a report, and not a petition, is required. After each hearing, including the removal hearing, the Article 10 dispositional hearing and each permanency hearing, the court must issue an order. The Social Services Payment System (SSPS) edits are being revised to allow on-going legal authority for the children who are subject to the provisions of the new Article 10-A.

### **Miscellaneous**

95. Please clarify specifically how the 2005 Permanency Bill will impact Unaccompanied Refugee Minors?

While the 2005 Permanency Bill does not expressly refer to Unaccompanied Refugee Minors, OCFS' position is that the standards of the new Article 10-A relating to permanency hearings should apply to such children. OCFS is developing Build 19 in CONNECTIONS to reflect this category of children in its legal module. This is being done, in part, to satisfy federal Title IV-E State Plan requirements whereby New York must afford procedural safeguards to all categories of foster children, irrespective of whether they receive Title IV-E funding or not.

96. Were any changes contemplated in permanency hearings for AWOL children?

If a youth is in the custody and guardianship of the local LDSS commissioner, the youth will remain the legal responsibility of the LDSS and permanency hearings must continue. If the youth is in the care and custody of the local LDSS commissioner and is to remain in that status, again permanency hearings will be necessary. Pursuant to the current regulations at 18 NYCRR 431.8(f)(2) and (3), youth in foster care who are AWOL for 60 consecutive days may be discharged if diligent efforts have been made to locate and return the youth and one of the following occurs: (1) the LDSS petitions the family court and the court discharges the child from the local commissioner's custody; or (2) the court order giving the local commissioner custody expires. However, under the Permanency Bill, the custody order will no longer expire, and therefore, the application must be made to the court either prior to, or at the next scheduled permanency hearing. Thus, the option is open to the LDSS to seek to end the foster care placement of a youth in the care and custody of the local commissioner (but not a youth who is in the custody and guardianship of the local commissioner) proactively by going to court. However, should the youth be discharged from care upon approval by the court and the youth subsequently re-enters care at a later time other than through a removal from a parent or relative, the youth would no longer be eligible for Title IV-E funding for a subsequent foster care stay. Therefore, if the LDSS anticipates that the youth may re-enter foster care, it might be more prudent in the long term to continue the placement, particularly where there is no family or other resource for the child, and, in that event permanency hearings must continue