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Informational Letter

Transmittal:	10-OCFS-INF-07
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	July 21, 2010
Subject:	Flexibility in Sleeping Arrangement Requirements for Sibling Foster Care Placements
Suggested Distribution:	Directors of Services Foster Care Supervisors Homefinding Supervisors
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Attachments:	Yes
Attachment Available Online:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
07-OCFS-INF-04 92- ADM-24		18 NYCRR 431.10 and 443.3	FCA 1027-a SSL 358-a(11) SSL 384-a (1-a)(b)		

I. Purpose

The purpose of this Informational Letter (INF) is to advise local departments of social services (LDSS) and voluntary authorized agencies of newly promulgated amendments to 18 NYCRR 443.3 regarding certification and approval of foster family boarding homes. The amendments to 18 NYCRR 443.3(a)(4) and (5) became effective on July 21, 2010. The regulatory amendments allow greater flexibility for the placement of sibling groups cared for in foster boarding homes.

The regulatory amendments provide an alternative to the following general rules regarding sleeping arrangements:

- Not more than three persons can occupy any bedroom where children at board sleep; and
- Separate bedrooms are required for children of the opposite sex over seven years of age.

In both circumstances the alternative sleeping arrangements must be consistent with the health, safety and welfare of each of the children and be necessary to keep the siblings or half-siblings placed together. This INF will provide guidelines to LDSSs and voluntary authorized agencies regarding this increased flexibility of the sleeping arrangement requirements.

II. Background

The Office of Children and Family Services (OCFS) recognizes it is important for siblings or half-siblings to remain in placement together. Section 1027-a of the Family Court Act (FCA) and sections 358-a(11) and 384-a(1-a)(b) of Social Services Law (SSL) state that placement of siblings or half-siblings together must be sought unless such placement is contrary to the best interests of the children. OCFS requirements and policy, as promulgated by 18 NYCRR 431.10 and 92-ADM-24 *Foster Care, Adoption: Requirements for Sibling Placement, Visitation, and Communication* address the need to place

siblings or half-sibling together unless placement together would be detrimental to the best interests of the siblings. The regulation and policy also state that siblings or half-siblings may only be separated if the placement together is determined to be contrary to the health, safety or welfare of one or more of the children.

In 2005, the Office of the New York State Comptroller conducted audits both upstate and at the New York City Administration for Children's Services (ACS) on *Sibling Placement in Foster Care* (Report 2005-S-70 and Report 2005-S-10). The findings of these audits determined that local social services districts needed to do more to either place siblings together or to document why such placements were not feasible.

In June of 2007, OCFS released an INF (07-OCFS-INF-04) titled *Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State*, which emphasized the importance of the sibling bond to children's development and emotional well-being. Many mental health and child care experts have stated that the sibling bond is extremely important for the mental health and well-being of all children, and maybe even more so for children in foster care who have usually suffered a significant amount of loss. Research has shown that siblings in foster care who are placed together tend to have fewer emotional and behavioral issues than those placed apart. They are also less likely to experience a disruption in placement.

In addition, the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L.110-351), which went into effect October 7, 2008, amended Title IV-E of the Social Security Act to require states to make reasonable efforts to place siblings in the same foster care, kinship guardianship, or adoptive placement, unless doing so would be contrary to the safety or well-being of any of the siblings. OCFS, already committed to keeping siblings together, found this new law reinforced New York's longstanding commitment to this issue and caused OCFS to re-examine if there were additional steps that could be taken to assist LDSSs and voluntary authorized agencies in keeping siblings together.

Prior to the adoption of the regulatory amendment discussed in this release, foster families were required to have separate bedrooms for children of the opposite sex over seven years of age without any differentiation between siblings or half-siblings and non-siblings. Therefore, if a foster family had only one bedroom available, they would not be able to accommodate two or more siblings or half-siblings if they are not of the same sex and are over the age of seven. The regulatory amendment to 18 NYCRR 443.3(a)(4) adds an alternative to the requirement for separate bedrooms for opposite sex children over age seven when the children are siblings or half-siblings, as long as the sleeping arrangement is consistent with the health, safety and welfare of each of the children and is necessary to keep the siblings or half-siblings placed together in the same foster home.

Also, prior to the amendment addressed in this release, foster families were required to have not more than three persons occupying any bedroom where foster children sleep. This requirement did not take into consideration if the children are siblings or half-siblings and the room is sufficiently large enough to accommodate a larger number of children. If the foster family only had one bedroom available, they could not be used as a resource for a sibling or half-sibling group of four or more children, even if the bedroom available was large enough to accommodate four or more children. Likewise, if the sibling group was even larger than four, and more than one bedroom was available, there was still a prohibition on placing more than three children in one bedroom. The regulatory amendment to 18 NYCRR 443.3(a)(5) adds an alternative to the number of children allowed per bedroom when the children are siblings or half-siblings, provided the occupancy is consistent with the health, safety and welfare of each of the children and is necessary to keep the siblings or half-siblings together in the same foster home.

OCFS has received requests from several LDSSs requesting added flexibility in meeting bedroom capacity and sleeping arrangements requirements so that siblings or half-siblings could be placed together.

These regulatory amendments to 18 NYCRR 443.3(a)(4) & (5) allow LDSSs and voluntary authorized agencies to consider otherwise willing and appropriate foster homes that may have limited bedroom space as potential resources for children that are siblings or half-siblings. These amendments will likely result in more siblings and half-siblings being placed together in one foster home. Furthermore, these amendments also avoid having to implement visiting arrangements between siblings placed apart and make parental visits easier.

III. Program Implications

According to 18 NYCRR 431.10, foster children who are siblings or half-siblings must not be unnecessarily separated. OCFS Administrative Directive 92 ADM-24 *Foster Care, Adoption: Requirements for Sibling Placement, Visitation, and Communication*, that reflects the standards set forth in 18 NYCRR 430.10 requires LDSSs and voluntary authorized agencies to place siblings together in foster care and adoption unless such placement is determined to be detrimental to the health, safety or welfare of one or more of the children. The directive also requires that if siblings are to be placed separately, an assessment justifying the separation must be made in conjunction with the appropriate professional staff, and findings in support of the separation must be recorded. With the amendment to 18 NYCRR 443.3(a)(4) and 443.3(a)(5), OCFS has added more flexibility in foster family boarding home sleeping arrangements in support of siblings or half-siblings being placed together. However, it is important to note that these amendments do not require any LDSS or voluntary authorized agency to use the added

flexibility for the placement of siblings or half-siblings; though they still need to meet the requirements under section 1027-a of the FCA or sections 358-a(11) and 384-a(1-a)(b) of SSL and 18 NYCRR 431.10 as described in 92 ADM-24 and assess the potential sibling placement as it relates to the health, safety, and welfare of one or more of the children. The difference with this amendment is that there will be more flexibility in regards to the foster care sleeping arrangements when completing this assessment.

While this increased flexibility can benefit sibling placements, it is important for LDSS and voluntary authorized agency staff to carefully consider each individual child and foster family's circumstance, and only make placements that are safe and in support of the child's well-being and best interests. The health, safety and welfare of children is an essential part of any placement decision, and it is expected that LDSSs and voluntary authorized agencies have procedures in place to assess these factors and make placements that are in the best interests of the children under their care. As a reminder, prior to any foster home placement, including any emergency placement, the agency must assess the likely effect on other foster children already in the home. In addition, consistent with good practice, the likely effect on the foster parent's own children should be considered, as does the behaviors of caregivers and other adults and children who may have access to the child.

With that in mind, this INF provides some guidance regarding good casework around assessing appropriate sleeping arrangements in conjunction with sibling placements.

Guidelines:

The amendment to 18 NYCRR 443.3(a)(4) allows for siblings or half-siblings over seven years of age to share a bedroom if the sleeping arrangements are consistent with the health, safety and welfare of each of the children and such sleeping arrangements are necessary to place siblings or half-siblings together in the same foster home. Before making a placement with alternative sleeping arrangements, the caseworker needs to make a thorough assessment, where necessary in consultation with other professionals, of the sibling relationship and rule out any such placements that would not be in one or more of the sibling's best interests. Some considerations are:

- the age of the children
- the degree of age difference between the children
- the developmental levels and needs of both children
- the privacy needs of the children and plans to meet these needs
- the children's history prior to placement, including sleeping arrangements at home; any resultant issues tied to that arrangement, or any other factors that would contraindicate sharing a room; children's unremarkable history of room sharing

- the children's foster care placement history, including sleeping arrangements while in foster care; any resultant issues tied to that arrangement, or any other factors in their placement history that would contraindicate sharing a room; children's unremarkable history of room sharing while in foster care
- any history or suspicion of sexual abuse or sexual exploitation
- if there is a power and control dynamic between the children
- the supervision plan within the home
- that the children have separate beds, and accommodations for their clothing and other belongings
- previous separations

The amendment to 18 NYCRR 443.3(a)(5) allows for more than three persons to occupy a bedroom where children sleep when the children are siblings or half-siblings, provided the occupancy is consistent with the health, safety and welfare of each of the children and is necessary to keep them together in the same foster home. When considering making such a placement, the caseworker should make an assessment of the space available in the bedroom and whether or not it would meet the needs of the children. Some considerations are:

- if appropriate beds will fit in the room for all children sleeping there
- if additional other bedroom furnishings will fit in the room for all children sleeping there
- if there are sufficient accommodations for the children's clothing and other belongings
- the sleeping patterns of the children and if they may be disruptive to one another
- the ability for the children to hear emergency alarms and evacuate in an emergency situation

In both these sleeping plans, if the children are old enough and mature enough they should be consulted. They may positively express a desire to share a room, and this should certainly be considered. However, if a child expresses fear or concerns about sharing a room with his or her sibling(s), the reasons should be explored with the child, and he or she should not be forced to share the bedroom with the sibling(s). The foster parents and, depending on the case circumstances, the birth parents can be consulted regarding the history with the children and what they feel would be in the children's best interests. If the children have therapists or mental health providers, consultation should also occur with them during the assessment. It is also strongly recommended that the caseworker do a walk-through of the physical space where the children will be sleeping as part of their assessment.

After the assessment of the children's best interests, safety and well-being with regard to sleeping arrangements, if it is determined that foster home placement should be made in a foster boarding home where siblings or half-

siblings will share a bedroom in accordance with the flexibility the new regulations provide, it is recommended that such decision be reviewed with a supervisor for approval. It is important for the caseworker to document this assessment and decision in the case record.

As with all activities related to siblings, agency caseworkers are required to document reasons for separating siblings in the Family Assessment and Services Plan (FASP). This may include the decision to not place a child with his or her siblings if the sleeping arrangements are not consistent with the child's health, safety or well-being. The area of the FASP that addresses this is the "Continuity of Environment" tab, which is designed to capture information about the worker's efforts to maintain an environment as similar as possible to that of the child placed in care where it is safe and appropriate to do so. Under this section, one of the questions workers are asked is if the siblings are placed in the same home, and, if not, they need to explain why they are separated in the narrative field provided.

In addition, it is essential that caseworkers conduct and document safety assessments, at placement and on an ongoing basis, and that any safety related factors as well as protective factors in that home are documented in each periodic FASP in the FASP section entitled "Safety in Foster Care,". If safety-related issues are identified, workers, also need to document the actions the worker or agency took to intervene and preserve the child's safety in that placement or to move a child if circumstances require such action.

/s/ Nancy Martinez

Issued By:

Name: Nancy Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

Attachment A**Regulatory Amendment to 18 NYCRR 443.3**

Paragraph (4) of subdivision (a) of section 443.3 is amended to read as follows:

(4) Separate bedrooms are required for children of the opposite sex over seven years of age, unless the children are siblings or half siblings sharing the same bedroom and the alternative sleeping arrangement is consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.

Paragraph (5) of subdivision (a) of section 443.3 is amended to read as follows:

(5) Not more than three persons may occupy any bedroom where children at board sleep, unless the children are siblings or half siblings and the occupancy is consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.