

Permanency Planning

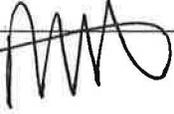
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SUMMARY: <p>This policy provides direction to ACS and foster care provider agency staff on permanency planning for children and youth in foster care, utilizing concurrent planning strategies and casework activities. The goal of this policy is to promote compliance with Title IV-E of the Social Security Act (SSA), as amended by the Adoption and Safe Families Act (ASFA) of 1997, and to thereby reduce the time it takes children in foster care to achieve permanency.</p> <p>The policy emphasizes the use of adoption and kinship guardianship as permanency options when reunification with a child's parent is not possible within a reasonable timeframe.</p>			
SCOPE: <p>This policy applies to foster care provider agency staff and Children's Services' Divisions of Child Protection (DCP), Family Permanency Services (FPS), and Family Court Legal Services (FCLS). It must be utilized when working with families whose children are in foster care.</p>			

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I. Introduction

A. TITLE IV-E: Adoption and Safe Families Act (ASFA)

Title IV-E of the SSA, as amended by the Adoption and Safe Families Act (ASFA) of 1997, emphasizes moving children safely and quickly from the temporary status of foster care to the security of a safe and permanent family. New York State enacted legislation implementing ASFA on February 11, 1999. In order to achieve timely permanency for children, the Administration for Children's Services (ACS) requires foster care provider agencies to adopt concurrent planning as part of their case practice.

B. Possible Permanency Plans for Children¹

1. Return to parent or parents;
2. Placement for adoption with the local social services official filing a petition for termination of parental rights;
3. Referral for legal guardianship;
4. Permanent placement with a fit and willing relative; or
5. Placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child, including documentation of the compelling reason for determining that it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative (but only if there is a compelling reason why none of the other ASFA permanency plans is in the child's best interests).

C. Concurrent Planning

1. Concurrent planning² signifies that there is a primary permanency plan and a secondary permanency plan (in some cases, more than two permanency plans will exist) for a child in foster care. ACS policy requires that concurrent planning begin when a child is first removed from his/her parent or relative's home and continues when the child enters foster care and throughout the life of the case. Typically, the primary plan is reunification with the child's family of origin. The concurrent plan could include adoption, kinship guardianship, legal custody, or another planned permanent living arrangement with a significant connection to an adult permanency resource.
2. Provider agencies are encouraged to use family finding strategies to identify specific resources early in each case. This process supports concurrent planning because it

¹ Family Court Act § 1089 and 18 NYCRR § 430.12.

² 00-OCFS-INF-5, September 6, 2000; Scoppetta, N. (May, 2001). Implementation of ASFA Plan IV; Mattingly, J. (Sept. 2006). Adoption and Safe Families Act Permanency Plan-Adoption.

allows the case planner to work with the parent and child/youth to provide input in the selection of a permanent resource at the beginning of placement, and it minimizes placement disruptions in the future. To be effective, concurrent planning requires not only the identification of an alternative plan, but also the implementation of active efforts toward both plans simultaneously, with full knowledge of all case participants. Concurrent planning requires focused thoughtful work at the beginning of the case and throughout the case. The agency staff must work with the parent, child and resource family, so they can be the child's permanent family if reunification is not possible, and take steps toward replacing the child with the permanency resource family as early in the case as possible.

D. Case Planning Activities

1. Case planners and caseworkers (hereinafter referred to as "case planners") must follow the timeframes described in Section III when working with families on their concurrent permanency plans. Concurrent planning goals and timelines must be explicitly discussed in a candid and respectful manner with all participants in the case planning process, including parents, extended family, children and youth, foster parents, and the attorneys that represent young people and parents.
2. The following topics must be included throughout case planning discussions and tailored to the unique circumstances and timeframe of the case:
 - a. Timeframes and expectations;
 - b. Parental rights and responsibilities vis-à-vis their child(ren) in foster care;
 - c. Identification of problems that led to the child's placement in care;
 - d. Actions the case planner will take to support reunification within specific timeframes,³ including but not limited to the provision of services and referrals;
 - e. Options for discharge, including but not limited to, surrendering⁴ the child or kinship guardianship;
 - f. Consequences if parents do not adhere to the service plan or make changes necessary for reunification within specified timeframes; Discussion/review of prior service referrals that have been made or services provided that did not

³ Reasonable efforts to enable the child to return home safely are services designed to resolve the problems which brought the child into care and the problems which prevent the child from returning home, including but not limited to:

- a. A plan to maintain the parent-child bond through visiting and other parent-child contacts;
- b. Engaging parents in the service planning and permanency planning process; and
- c. Providing and/or linking families with services that support reunification, including but not limited to substance abuse treatment, mental health services, domestic violence services, housing referrals, counseling, and parenting skills training.

⁴ In New York State, a birth parent's voluntary relinquishment of a child is called a Surrender. Birth parent(s) can either sign an Unconditional Surrender or agree to a Conditional Surrender, where they can add certain conditions to the surrender agreement. See also Section III(H).

result in engagement, and what steps case planners can take to enable the parents to become engaged; and

- g. Efforts parents may be making independent of the service plan and whether they are appropriate.

E. Kinship Guardianship⁵

The Kinship Guardianship Assistance Program (KinGAP), implemented in New York State on April 1, 2011, is a federally supported program designed to provide financial assistance and medical coverage to qualified related caregivers who assume legal guardianship of children formerly in their care as foster children. It is expected that KinGAP will promote permanency for foster children who do not have discharge goals of return to parent or adoption by providing safe, permanent placements with relatives. It allows permanency with relatives who, prior to the law's implementation, would not have wanted to switch from being a kinship foster parent to assuming legal guardianship due to the loss of financial assistance and medical coverage that used to occur.⁶

F. Documentation of Permanency Planning Activities⁷

1. All permanency case planning activities must be:
 - a. Documented in CONNECTIONS (CNNX);
 - b. Reviewed with supervisory feedback in the progress notes and FASP;
 - c. Approved by the case planner's supervisor (both the concurrent plan and goals made by the case planner);
 - d. Discussed at every Permanency Conference or Service Plan Review (SPR); and
 - e. Written in every Permanency Hearing Report.

⁵ For more information see OCFS Kinship Guardianship Practice Guide, July 2011.
<http://ocfs.ny.gov/kinship/guides.asp>

⁶ Kinship guardianship must be explored as a permanency option if the following apply: a) the child is under 21 years of age; b) the prospective relative guardian is related to the child by blood, marriage or adoption; c) the child has been placed in the prospective relative guardian's home for at least six (6) consecutive months while the home was fully certified or approved as a foster home before application for KinGAP, with no lapses in certification or approval during this period; d) the child was placed in foster care before his or her 18th birthday by means of Article 3, 7, or 10, or 10-C, or a voluntary placement or voluntary surrender; e) the prospective relative guardian is a fully certified or approved foster parent for six (6) months, with no lapses in certification or approval during this period; f) there is a documented compelling reason why reunification and adoption are not appropriate permanency alternatives; g) the child demonstrates a strong attachment to the prospective relative guardian and the prospective relative guardian has a strong commitment to caring for the child on a permanent basis; h) the child if age 14 or older has been consulted on the guardianship and in the case of a young person 18 years or older, the youth has consented; i) the prospective relative guardian is ready, willing and able, to provide a permanent home until the child reaches adulthood; and j) for all children in foster care, the child's first permanency hearing must have been completed for the child to be eligible. Additionally, for children placed into foster care under an Article 10 proceeding, the fact finding must also have been completed for the child to be eligible. See 11 OCFS-ADM-03.

⁷ 18 NYCRR § 428.5 and 18 NYCRR § 428.6.

II. Diligent Efforts for Permanent Discharge⁸

A. Purpose and Documentation of Diligent Efforts

1. Diligent efforts refer to efforts the case planning agency makes to reunify children/youth in foster care with the adult(s) from whom they were removed when they were remanded into foster care. In most cases, the adult(s) are the biological parent(s) of the child(ren).
2. From the beginning of each case, foster care providers must make diligent efforts to reunify the family and simultaneously make efforts to locate other family members including non-respondent parents and grandparents or “fictive kin” (non-relatives who have had a significant prior relationship with the child).
3. Diligent efforts to reunify the family must be reflected in the timely creation of family service plans, advocacy by the case planner to provide all necessary services and referrals, and continuous follow-up with the parent(s) and service providers to make sure the parent(s) are engaged in the services and making progress toward overcoming the barriers that prevent the child(ren) from returning home.
4. Efforts to accomplish both objectives – reunification and searching for other potential discharge resources – must be clearly documented in the progress notes following every contact with the parent(s). The progress notes must reflect the case planner’s conversations with the parent(s) and any outside providers regarding the parent(s)’ service plan(s) and progress made or not made in achieving goals. The case planner must also document diligent efforts to assess the barriers that prevent the parent(s) from engaging in services, and steps taken by the case planner to assist the parent(s) in overcoming these barriers.
5. If there is no parent contact, the progress notes must reflect the case planner’s attempts to locate the parent(s).

B. Discussion and Documentation of Diligent Efforts During Supervision

The supervisor must discuss the case planner’s diligent efforts to engage the parents towards reunification, as well as efforts to locate other discharge resources during every individual supervision session. The supervisor must also document in his/her progress notes what feedback he/she provided to the case planner related to these efforts. If the case planner has not made required efforts, the supervisor must immediately address the deficiency and make sure that appropriate services are in place, and that outreach to the parents occurs expeditiously.

⁸ 18 NYCRR §§ 430.11 and 430.12.

C. Identifying a Child's Parent/Relatives and Other Suitable Persons

1. Provider agencies must pursue every possible resource necessary to identify a child's relatives and other suitable persons. The following locator information systems must be used at minimum to attempt to locate parents and other resources. Although these are very important tools, they are by no means the only tools to be utilized. These locator systems include:
 - a. Federal Parent Locator Service (FPLS)⁹ - Each provider agency has a FPLS Coordinator with whom case planners must speak during this process. The FPLS coordinator must:
 - i. Retrieve an OCFS-LDSS 7031 Transmittal for Federal Parent Locator Service search form template at:
http://ocfs.state.nyenet/admin/Forms/Foster_Care/forms/OCFS-LDSS-7031%20Transmittal%20for%20Parent%20Locator%20Service%20Search.doc;
 - ii. Complete the applicable fields on the OCFS-LDSS 7031 (see Federal Parent Locator, procedure 2009/05 for further details);
 - iii. Send the completed document to New York City Human Resources Administration's FPLS contact person, Eva Trevino, using the email address dfa6hra.sm.clu.dlgnt.srch. Ms. Trevino can also be reached at 929-221-4452.
 - b. Online NYC Department of Correction (DOC) Inmate Look-Up Service (ILS) - Agencies can access the DOC Inmate lookup Service (ILS) website at:
<http://a073-ils-web.nyc.gov/inmatelookup/pages/common/find.jsf>;¹⁰
 - c. ACS Diligent Search Unit at ACSDSU@DFA.STATE.NY.US¹¹
 - d. OCFS Parent Locator can be accessed by using the link below:
http://www.ocfs.state.ny.us/main/policies/external/OCFS_2007/ADMs/07-OCFS-ADM-09_Access_to_Federal_Parent_Locator_Service_-_State_Parent_Locator_Service_-_Additional_Financial_Information_in_Child_Welfare_Cases_for_Purposes_of_Permanency.pdf

D. Documentation of Diligent Efforts to Reunify and Efforts to Locate Other Resources:

1. All efforts described above must be:
 - a. Documented in CNNX and approved by the supervisor;
 - b. Reviewed by the case planner's supervisor who documents feedback in the progress notes and FASP; and

⁹ Mattingly, J. (Oct. 2009). Federal Parent Locator Service policy; and "policies/external/OCFS_2007/ADMs/07-OCFS-ADM-09 07-OCFS-ADM-09 Access to Federal Parent Locator Service"

¹⁰ Stephens, L. (Feb. 2012). Online Diligent Search Requests with the Department of Corrections.

¹¹ The ACS mailbox shall be password protected.

- c. Discussed at every Permanency Conference or SPR and included in every Permanency Hearing Report.

III. Permanency Planning Timeline

A. The Timeline For a Typical Case

The timeline for a typical case from the time the child enters foster care to the time the child achieves permanency, and the expectations regarding permanency planning activities to be conducted by the case planner at each milestone of the case, are outlined below.¹² Attachment A contains a permanency planning timeline that highlights the milestones at each stage.

B. Throughout the Timeline

Throughout the timeline, case planners shall make every effort to place the child with the concurrent resource as early as possible. Additionally, the case planner must work with the resource to gain his/her commitment to be the permanency resource if the child cannot return home.

C. First Month After Placement

1. It is important to use concurrent planning in the beginning of each case to achieve permanency and stabilize placements. At the very beginning, the case planner must make diligent efforts to support reunification, and must conduct an immediate investigation to locate any non-respondent parents of the child and any relatives of the child, including all of the child's grandparents, all suitable relatives identified by any respondent or non-respondent parent, and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his/her life, and inform them of the plan for the proceeding and of the opportunity for becoming foster parents or for seeking custody or care of the child. With regard to the second parent, discussions must begin regarding planning responsibilities and/or the possibility of surrendering parental rights.¹³
2. The case planner is required to accomplish the following tasks within the first thirty (30) days after the child is placed into foster care:
 - a. Obtain the child's birth certificate¹⁴ and social security card¹⁵;

¹² Both "remands" and "placements" into foster care are hereinafter referred to solely as "placement(s)."

¹³ Family Court Act §1017

¹⁴ Business Process Workgroup-Interactive document (2008-06-22) p. 8

¹⁵ Business Process Workgroup-Interactive document (2008-06-22) p. 96

- b. Discuss the ASFA/permanency planning timeline with parents and clearly communicate the expectations that parents will:
 - i. Maintain regular contact with the child(ren) through visitation; and
 - ii. Plan for the return of their child(ren) through engagement with services that address the reason why the child(ren) came into care;
- c. Apprise the parent(s) that termination of parental rights could result if they do not visit or plan and address the issues that resulted in the removal of the(ir) children;
- d. Find out the basis for placement (or reason the child[ren] came into care) and obtain copies of the court petition(s) and related/preliminary court order(s);
- e. Assess child(ren) and parent(s') needs to determine what is necessary for reunification to occur;
- f. Determine what services have been mandated by the family court;
- g. Based on the assessments and family court orders, provide mandated and other appropriate services, make appropriate service referrals, and set expectations for the parent(s') engagement with services with explicit timeframes;
- h. Facilitate regular visiting between the child and the parent(s) unless there is a court order prohibiting the visits;
- i. Initiate a diligent search if both parents' whereabouts are not identified;¹⁶
- j. Initiate a search for family members/permanency resources for the child(ren) (including "fictive kin"), to be either a potential adoptive parent, a potential guardian for the child(ren), a support for the parent(s), and/or a visiting resource and support for the child(ren);¹⁷
- k. Determine whether the child is an Indian child as defined in the federal Indian Child Welfare Act or New York statute or regulation;¹⁸
- l. Contact the assigned Family Court Legal Services attorney to determine whether it is appropriate to file a motion in family court pursuant to Family Court Act § 1039-b for an order dispensing with the reasonable efforts requirement. This order excuses the case planner from making reasonable efforts to reunify the child with the parent. (Note that this motion can be granted at any time in the life of a case and that the case planner must change the goal to adoption or referral for legal guardianship if the motion is granted.)¹⁹ A permanency hearing

¹⁶ Staff can contact the ACS Diligent Search Unit via email at ACSDSU@DFA.STATE.NY.US; 18 NYCRR § 430.12.

¹⁷ 11-OCFS-ADM-03

¹⁸ 06-OCFS-INF-07; SSL §§ 2, 39; 18 NYCRR § 431.18

¹⁹ A "no reasonable efforts" motion (also known as a "Family Court Act 1039-b motion") may be used when the parents' past actions have demonstrated that reunification would not be in the child's best interests and would be contrary to the health and safety of the child, including:

- a. **Aggravated Circumstances** –the parent of such child has subjected the child to aggravated circumstances, as defined in FCA §1012 (j) which includes the following: the child was severely or repeatedly abused; the child was abused found to be abused within five years of a return home; the court finds clear and convincing evidence that the parent has refused and failed completely, for at least six months from the date of removal, to engage in necessary services and has stated under oath that he or she intends to continue to refuse services. See FCA §1012(j).

- must be held within 30 days of a court finding that such efforts are not required;
and
m. Document all casework activities with the family in CNNX.

D. Second Month Through Seventh Month

1. If the child(ren) are still in care during this time, the case planner must:
 - a. Convene the required 90-Day and 6-Month Permanency Planning Family Team Conference (Service Plan Reviews) to develop an appropriate concurrent permanency plan for the child and his/her siblings. The Permanency Planning Family Team Conference provides an opportunity to assess the progress and review the barriers to permanency and develop a safe transition strategy from foster care to permanency;
 - b. Continue to monitor and work with both parents to encourage their engagement and success in services as agreed in the service plan;
 - c. Complete a diligent search for all parents and search for other potential discharge resources who could be the permanency resource;
 - d. Continue and confirm that the required provision of legal paperwork to the parents is complete;
 - e. Assess if Kinship Guardianship is a possible permanency option;
 - f. File a petition to terminate the parental rights of a parent who has abandoned a child²⁰ once the child has been in ACS care for six (6) months; and
 - g. Document all casework with the family in CNNX.

E. Eight Months After Placement - First Permanency Hearing (Non-Freed Abused or Neglected Children or Voluntarily Placed Foster Children)

1. At the first permanency hearing²¹, held eight (8) months after the child has been removed, and every six (6) months thereafter, the Court must determine the appropriateness of the agency's permanency plan and determine whether the agency has made reasonable efforts to enable the child to return home safely or to finalize the child's permanency plan. At this time, if the parent(s) are not engaged and have not successfully achieved the service plan goals as identified in the first thirty (30) days, the agency must continue to make diligent efforts to engage the

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- b. Criminal convictions – the parent has been convicted of certain “ASFA crimes,” such as murder, manslaughter, or a serious felony assault and the victim was either the subject child or another child for whose care the parent is or has been legally responsible. FCA §1039-b(b)(2)-(5)
 - c. Prior sibling termination of parental rights proceeding – the parent has previously had his or her parental rights to a sibling of the child terminated involuntarily.

²⁰ A parent is considered to have abandoned a child if the child has been in foster care for six (6) months and the parents have failed to visit or communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. See SSL§ 384-b.

²¹ Family Court Act § 1089

parent(s) to participate in services to address the reasons the child(ren) came into care. The Permanency Hearing Report must reflect all the efforts made to engage the parent(s), the services provided to the parent(s) and child(ren) including visits, and the progress made by the parent(s).²²

2. Prior to each permanency hearing, the provider agency must complete the following activities:
 - a. Convene a Permanency Conference²³ thirty (30) days prior to each permanency hearing for the purpose of discussing and preparing information for the comprehensive Permanency Hearing Report; and
 - b. Submit a comprehensive Permanency Hearing Report²⁴ to the FCLS attorney for review and submission to the Family Court and other related parties²⁵ regarding permanency planning and the services provided to the family.

F. During the First 11 Months after Placement

1. If the goal is still reunification, the case planner must work closely with the parent(s) and family members to continue to engage them in concurrent planning activities at all casework contacts. This must include the following activities:
 - a. Assessing whether parent(s) are working toward reunification goals and required activities;
 - b. Continuing diligent search efforts for all parents and other potential discharge resources;
 - c. Making all efforts (including database queries and interviews with children), even repeatedly, to find potential resources;
 - d. Documenting in progress notes and the FASP all diligent efforts made to keep the parent(s) involved and engaged;
 - e. Continuing to arrange and encourage visiting between parent(s) and child(ren);
 - f. Assessing foster parents and other familial and “fictive kin” relationships as potential resources for adoption or kinship guardianship (Note: fictive kin are not eligible for KinGAP); and
 - g. Verifying that the case file contains each child’s birth certificate²⁶ and social security card²⁷.

²² For JD and PINS placements, permanency hearings follow a different schedule in that, by statute, the initial permanency hearing shall be held no later than fourteen months after the removal from his or her home, and subsequent permanency hearings shall be held no later than every twelve months following the initial permanency hearing. See Family Court Act Article 3 and Article 7.

²³ A case consultation/Permanency Conference must occur before every permanency hearing if it does not coincide with the Service Plan Review (SPR) or another scheduled conference. However, if it does coincide, then it must take place at the SPR.

²⁴ Family Court Act § 1089

²⁵ In cases of domestic violence refer to the foster care standards.

G. During the 12-14 Month Period after Placement

1. Concurrent planning continues during these two months while preparation is being made for the second permanency planning hearing. If reunification is not expected within the next three months, and the parent(s) have neither completed the service expectations nor adhered to the visitation schedule during the last twelve (12) months, the agency case planner must:
 - a. Facilitate a goal change conference;
 - b. Explore both parents' willingness to surrender their parental rights;
 - c. Meet with the pre-adoptive or kinship family to discuss the adoptive and/or Kinship Guardianship process with them;
 - d. Compile necessary documentation to support the initiation of a termination of parental rights (TPR) petition or Kinship Guardianship application;
 - e. Explore, in discussions with the foster parent, whether he/she is interested in becoming a permanent resource for the child; and
 - f. Prepare for the second permanency hearing which usually occurs in the 14th month.
 - g. Note: Kinship guardianship must be explored earlier and continuously and does not require a TPR.
 - h. During this time period, the case planner's supervisor must hold formal supervisory meetings at least bi-weekly with the case planner to:
 - i. Review progress notes, including but not limited to information concerning permanency and concurrent planning activities;
 - ii. Document supervisory directives and decisions in progress notes;
 - iii. Discuss and decide on a goal change; and
 - iv. Provide written and verbal instructions to the case planner.

H. 15 Months after Placement

1. Explore Surrender Agreement

In New York State, a birth parent's voluntary relinquishment of a child is called a Surrender. Birth parents can either sign an Unconditional Surrender or agree to a Conditional Surrender, where they can add certain conditions to the surrender agreement. Such conditions usually fall into two categories:

- a. The surrender may specify the names of the adoptive parents; and

²⁶ Business Process Workgroup-Interactive Document (2008-06) p.8

²⁷ Business Process Workgroup-Interactive Document (2008-06) p. 96. If the child is undocumented, please refer to the Special Immigration Juvenile Status policy.

- b. The surrender may include terms for post-placement and post-adoption contact (e.g. visitation, cards/letters). The post-adoption contact agreement embodying the specific conditions must be signed by all concerned parties at the time the parent signs the surrender and must be submitted to the court for review to determine whether it is in the child’s best interests. Birth parents must be encouraged to consult with their attorneys if they are planning to sign a surrender.
 2. In cases where the birth parent is willing to surrender but unable to appear in court because of long-term hospitalization, incarceration, hospice care, etc., an Extrajudicial Surrender may be obtained. To execute an Extrajudicial Surrender:
 - a. Two (2) witnesses and a notary public must witness an extrajudicial surrender. One of the witnesses must be trained to accept extrajudicial surrenders for the agency. The other witness must be a social worker or attorney not employed by the agency; and
 - b. The extrajudicial surrender must be approved by the court, and the agency is required to file for approval within 15 days after it is signed.²⁸
 3. Explore Termination of Parental Rights

Whenever a child has been in foster care for 15 out of the last 22 months; or the child has been adjudicated as abandoned; or the parent has been convicted of certain categories of felony crimes, set forth in § 384-b(8), a petition to terminate parent rights must be filed unless one of the exceptions described in Sections I or J (below) are met²⁹ If the option of a Surrender has been explored and ruled out, the child is not going home within the next month, a TPR has not already been filed, none of the exceptions to the requirement that a TPR be filed (“compelling reasons not to file a TPR”³⁰) have been documented or substantiated, and a goal change conference has not occurred, the agency must immediately:

- a. Hold a meeting with the parents and pre-adoptive resources, if any, to discuss the agency’s plan to proceed with the TPR or Kinship Guardianship; Note: TPR is not necessary for KinGAP.
 - b. Document the content of the meeting and include the deadline for filing the TPR or Kinship Guardianship application; and
 - c. If a TPR is not being filed, for one of the reasons set forth in Section I or J, document the reason for not filing.

²⁸ 18 NYCRR § 421.6.

²⁹ Social Services Law § 384-b(3)(l) and § 384-b(8).

³⁰ Parrish, L. (May, 2001). ASFA’s TPR Requirement and Documentation of “Compelling Reasons” or Other Statutory Exception.

4. When reunification or adoption is not an appropriate permanency plan, and the child is placed in a kinship home, the agency must explore Kinship Guardianship. The case planner must document this exploration in detail.

I. 16 Months after Placement - File for TPR or Kinship Guardianship

1. If the child has been in foster care for 15 of the last 22 months, a court of competent jurisdiction has determined the child to be an abandoned child, or the parent has been convicted of a crime as set forth in subdivision eight of Social Services Law 384-b, a TPR petition must be filed unless based upon a case by case determination:³¹
 - a. The child is being cared for by a relative or relatives, either in foster care or direct placement;
 - b. The agency has documented in the most recent case plan that there is a compelling reason³² for determining that the filing of a TPR petition would not be in the best interests of the child;
 - c. The agency has not provided to the parent or parents of the child, services it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or
 - d. The parent or parents are incarcerated or participating in a residential substance abuse program, or the prior incarceration or participation in a program is a significant factor in why the child has been in foster care for 15 of the last 22 months, provided that the parent has maintained a meaningful role in the child's life and the agency has not documented a reason why it would otherwise be appropriate to file a TPR petition.
2. There is no legal requirement that the court must approve a goal change or order that a TPR be filed before the provider agency can file a TPR petition.

J. "Compelling Reasons" Not To File a TPR Petition³³

1. The following are considered "compelling reasons" that, if documented and substantiated, can be utilized as a reason not to file a TPR petition. This is not considered to be an all-inclusive list:

³¹ SSL § 384-b(3)(l)(i).

³² See below for definitions of "compelling reason."

³³ For more information on "Compelling Reasons" not to file a TPR see the following: 11-OCFS-ADM-07 Incarcerated Parents and Parents in Residential Substance Abuse Treatment with Children in Foster Care: Termination of Parental Rights and other Issues; Parish, L. (2001). ASFA's TPR Requirements and Documentation of "Compelling Reasons" or Other Statutory Exception; 00 OCFS INF-5; Scopetta, N. (1999). ACS Permanency Review Guidelines; 98 OCFS INF-3

- a. The child was placed into foster care on a PINS or juvenile delinquency case and a review of the specific facts and circumstances of the child placement demonstrate that the child appropriate permanency goal is either return to parent or discharge to another planned permanent living arrangement;
 - b. Where adoption is not the appropriate permanency goal for the child³⁴;
 - c. The child is 14 years of age or older and will not consent to adoption after being counseled by an agency staff member and after given the opportunity to be heard in court;
 - d. There are insufficient grounds for filing a TPR petition determined after consultation with the FCLS attorney/agency attorney; or
 - e. The child is the subject of a pending disposition on an abuse or neglect case, except where the child is already in the custody of ACS as a result of another proceeding and the permanency goal is discharge to parent or guardian.
2. Note that there are different standards for commencing a termination of parental rights petition against the parents of an Indian child. The agency attorney must be consulted to determine whether there has been compliance with all of the requirements of the Indian Child Welfare Act.³⁵
 3. The decision not to file a TPR is done on a case-by-case basis and it must meet one of the criteria listed above.
 4. Lack of documentation of diligent efforts by the agency case planner is not a valid reason for not seeking to file a TPR petition. Although that deficiency reflects poor casework practice, there may be additional grounds to file a petition. In these cases, the case planner must consult the FCLS attorney/agency attorney to determine an appropriate course of action.

³⁴ See 18 NYCRR 431.9(e)(2)(ii)(a) and (b).

³⁵ No foster care placement of an Indian child may be ordered by a court unless there is a determination, supported by **clear and convincing** evidence, including testimony of a qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. No termination of parental rights of an Indian child may be ordered by a court unless there is a determination, supported by evidence **beyond a reasonable doubt**, including testimony of a qualified expert witness that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. In any child custody proceeding initiated by a social services official pursuant to section 384-b of the Social Services Law or article 10 of the Family Court Act which involves an Indian child, the official shall notify the child's parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested of the pending proceeding and of their right to intervene in such proceeding. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior and the New York State Office of Children and Family Services by registered mail with return receipt requested. Such notice shall be forwarded to the Secretary of the Interior at: Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, DC 20245. For further requirements, see 18 NYCRR § 431.18. See also 06-OCFS-INF-07.

5. Filing a TPR does not necessarily mean that the parent no longer has an opportunity to reunify with his/her child(ren). If, during the course of the TPR case, the parent begins to take clear steps towards reunification, it is possible that the family court could order a “suspended judgment” at the conclusion of the case. A suspended judgment suspends the TPR for a set amount of time. At the end of the time period, if the parent has continued to take clear steps towards reunification, the TPR can be vacated and parental rights kept intact. If the parent has not taken clear steps towards reunification during the period of suspended judgment, the TPR would likely continue and parental rights will be terminated.
 - a. The agency/case planner justifying a “compelling reason” not to file a TPR must:
 - i. Document in CNNX and reassess every three (3) months or more frequently;
 - ii. Receive supervisory review of progress notes with documented feedback; and
 - iii. Discuss at the Permanency Conference and include in the Permanency Hearing Report.
6. The decision not to file a TPR must be reassessed every six (6) months, or less, to determine if the basis for the decision, including the compelling reason, if that is the basis not to file, is still applicable.
7. Documentation in the progress notes, FASP and the Permanency Hearing Report must clearly describe the basis for the decision not to file a TPR. The documentation must include the compelling reason and the agency’s plan to achieve permanency goals for the child while that circumstance exists.
8. All work by the provider agency/case planner justifying a reason not to file a TPR must be:
 - a. Documented in CNNX;
 - b. Reviewed with supervisory feedback documented in the progress notes and FASP;
 - c. Discussed at the Permanency Conference/SPR; and
 - d. Written in the Permanency Hearing Report.
9. When neither reunification nor adoption is an appropriate permanency plan, and the child is placed in a kinship home, the agency must explore Kinship Guardianship and file an application if appropriate.

K. During the 17-27 Month Period After Removal³⁶

³⁶ The timeline from here on applies to cases where a TPR petition or kinship guardianship application has been filed. For other cases, please re-assess family’s progress towards the plan and the appropriate permanency planning goal.

1. It is contemplated that by this time a TPR petition or Kinship Guardianship application has been filed in the case, except for cases where reunification is occurring or where other exceptions mentioned above exist.
2. At this juncture, if the TPR petition has been filed the following must be completed by the agency:
 - a. Verify that pre-adoptive parents have scheduled their medical exams toward the end of the TPR proceedings;
 - b. Prepare and submit an adoption subsidy application for approval;
 - c. Obtain pre-adoptive parents' signature on "Intent to Adopt";
 - d. Discuss the need to retain an adoption attorney with the pre-adoptive parents;
 - e. Complete an adoption home study; and
 - f. Verify that the agency attorney prepares and finalizes the "Freeing Order" (the court order that frees the child[ren] for adoption) once the TPR is granted.
3. At this juncture, the provider agency attorney must complete the following tasks:
 - a. File a Chapter 588 adoption petition³⁷ prior to the TPR disposition, if appropriate; and
 - b. Verify that the Freeing Order is delivered, signed, certified and sealed.
4. During this period, two (2) permanency hearings³⁸ will be held as described below.

L. 20 Months after Placement - Third Permanency Hearing

³⁷ Chapter 588 refers to Chapter 588 of the Laws of 1991 which amended the DRL § 112(8) and the SSL §§ 383-c and 384-b to allow for the early submission of an adoption petition: a) while a termination case is pending; b) immediately upon surrender of the child; or c) upon entry of an order terminating parental rights. When the judge approves a surrender and/or makes an oral ruling terminating parental rights, he/she is notified that the adoption petition has been filed, and an adoption finalization date is set. The judge hearing the TPR case however, must not be provided with the adoption petition, supporting documents, nor the fact of their filing until after the fact-finding portion of the TPR hearing has concluded. When judiciously used, a Chapter 588 petition can greatly expedite an adoption. It must be noted though, that documents in an adoption petition (such as home-study updates, clearances and criminal checks, Putative Father Registry checks, and medicals) must be kept current until the adoption finalization date. Therefore, 588 filings are not appropriate for cases that tend to be protracted, such as cases with service issues, contested proceedings (including those that may result in suspended judgments), and cases with mental health allegations or a strong likelihood of appeal.

³⁸ Permanency hearings are not always held on schedule due to the Court's calendar issues. The law allows the Court some flexibility in scheduling (such as using language such as, "no later than") which results in some permanency hearings not being completed on time. In some instances, a permanency hearing with regard to one child is combined with that of the child's sibling, even if that hearing is not on the same schedule, thereby modifying the permanency schedule for the second child.

At this time, the third permanency hearing is held. The focus of this permanency hearing is to discuss any issues related to the TPR proceedings or kinship guardianship application. The agency must follow the steps outlined above to prepare for the permanency hearing.

M. 26 Months after Placement - Fourth Permanency Hearing

The main focus of this permanency hearing is to free the child(ren) for adoption, or make progress towards kinship guardianship. Prior to this hearing, the agency must follow the steps outlined above to prepare for the permanency hearing.

N. 28-38 Months after Placement

1. At this stage, the primary focus is to move the child(ren) through the adoption or kinship guardianship process, if it has not been completed by this time. Once a child is freed for adoption, the Adoption Placement Agreement (APA) must be signed by the adoptive resource within 10 days. An adoption home study should also have been done. The case planner and agency must actively seek to verify that the following activities are completed:
 - a. Work with the Adoptive Parent(s) attorney to prepare the documentation needed for the adoption packet;
 - b. Obtain the prospective guardian's signature on the KinGAP application, and the KinGap subsidy agreement once the application is approved by ACS;
 - c. Coordinate filing of the adoption petition with the adoption attorney; and
 - d. Follow-up with the foster parent(s) and their attorney to ensure that the adoption or Kinship Guardianship hearing has been calendared in court.
2. For information about the documentation that must be included in the adoption finalization packet, the case planner must work with the attorney chosen by the adoptive resource. The case planner may also refer to the New York State Unified Court System website.

O. 32 Months after Placement - Fifth Permanency Hearing

The purpose of this hearing is to verify that the requirements to finalize the adoption or kinship guardianship³⁹ have been met, if still outstanding. It is anticipated that the adoption or guardianship finalization would take place at approximately the 39 month mark after placement. However, if child(ren) have been in the relative's home

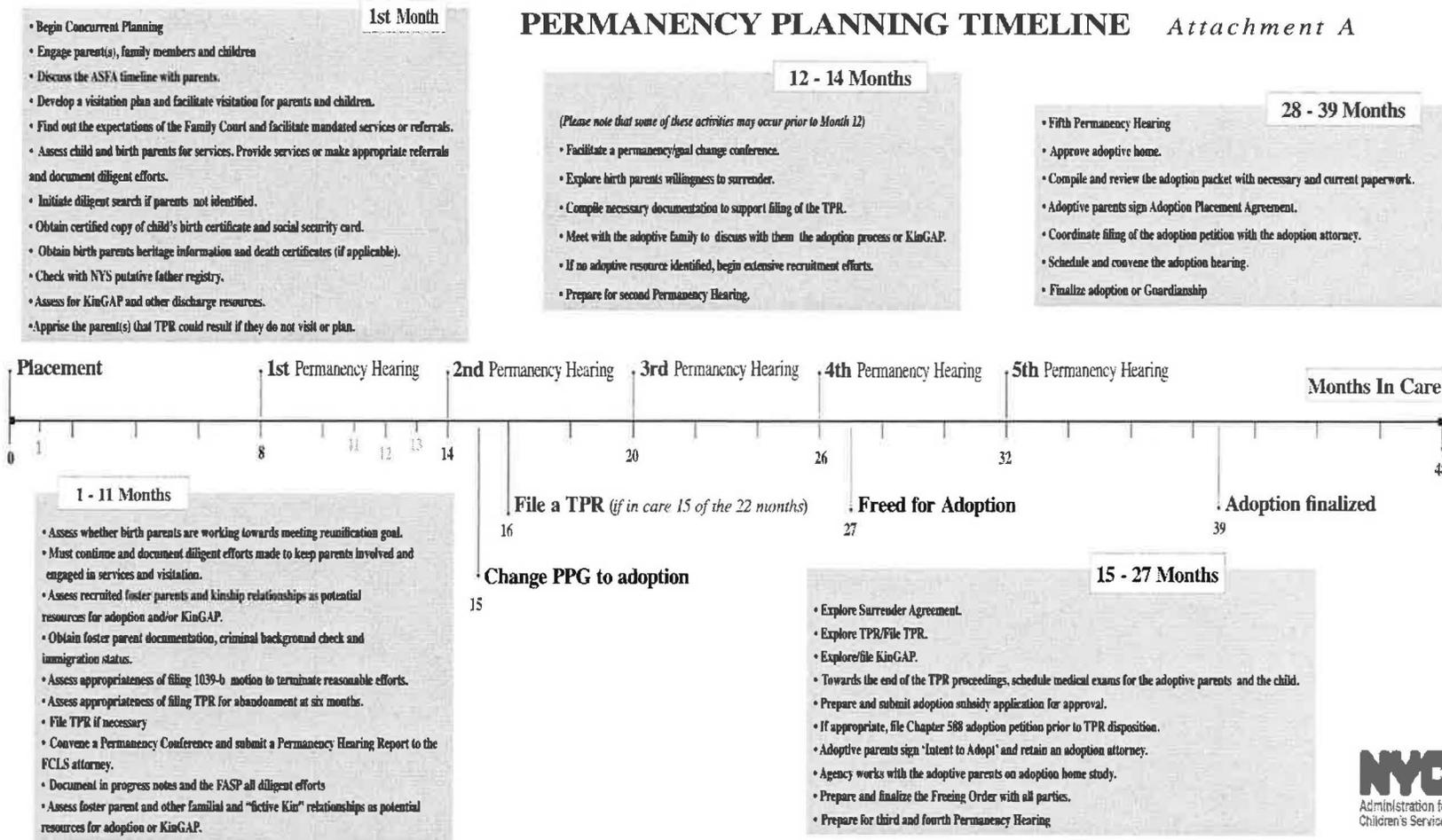
³⁹ If child(ren) have been in the relative's home continuously for six (6) months without interruptions and the relative has been a fully certified or approved foster parent the kinship guardianship agreement will be finalized earlier.

continuously for six (6) months without interruptions the kinship guardianship agreement will be finalized earlier.

P. 39 Months after Placement

At this juncture, the Adoption or Guardianship must be finalized. Additionally, Children's Services and provider agency staff must make certain that adopted and kinship guardianship children and their families have access to services as necessary.

PERMANENCY PLANNING TIMELINE *Attachment A*



Attachment B

ACS EXPECTATIONS FOR DOCUMENTATION OF SUPERVISORY ACTIVITIES AND FEEDBACK IN CONNECTIONS

This outline is to be used as a guide. Supervisors and other contract agency staff are encouraged to document any and all interactions, assessments, casework contacts or other supervisory activities more frequently than described below. This is intended to set a minimum standard for the frequency and content of supervisory documentation in CONNECTIONS (CNNX). ACS will accept multiple monthly entries or formats which differ from those described below, so long as these topics are each substantively addressed on at least a monthly basis.

This policy requires that all permanency planning activities must be discussed in supervision with case planning staff, and that these supervisory activities must be documented in CNNX. In particular, supervisors must:

- Discuss and approve all diligent efforts to engage birth families in planning;
- Discuss and approve all diligent efforts to engage youth in planning accordingly;
- Monitor and approve both primary and concurrent planning activities undertaken by the case planner;
- Give feedback and directives to case planners on their efforts and promptly address any deficiencies; and
- Discuss and decide on a permanency goal change when appropriate and within required ASFA timeframes.

This section will describe ACS expectations for the frequency and format of the documentation described above.

With the exception of the phase between months 12 and 14 of placement, supervisors must enter a summary note on at least a monthly basis which describes all supervisory activities and efforts undertaken during that time frame. Cases in the 12- to 14-month phase require bi-weekly updates as described on pages 10 and 11 of this policy.

A monthly supervisory note for each case should include:

- A **concise, factual summary** of all supervisory activities and interactions during the month, with dates and durations, including but not limited to:
 - Formal or informal individual supervision;
 - Group supervision or team meetings in which the case was discussed;
 - Treatment conferences or other case consultations in which the supervisor participated; and
 - Any other relevant supervisory activities not discussed in regular progress notes.

- A discussion of the concrete casework activities undertaken by the case planner and documented in CNNX, and the appropriateness of these activities, including:
 - Diligent efforts to engage the parent, discharge resource, and youth [when appropriate] to further the primary and concurrent permanency goals;
 - An assessment of progress towards permanency and the completion of any past directives given by the supervisor or other parties (i.e. court orders);
 - The preparation and review of documentation, including progress notes, FASPs, and court reports; and
 - The completion, or lack thereof, of any specific objectives described in this policy, including the permanency planning timeline on pages 7-18.
- The supervisor's feedback on the case planner's efforts and progress, including specific, relevant, measurable goals and a timeframe for their achievement.