

18 NYCRR 430.11

N.Y. Comp. Codes R. & Regs. tit. 18, § 430.11

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW
YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 2. FAMILY AND CHILDREN'S SERVICES
PART 430. ADDITIONAL LIMITATIONS ON REIMBURSEMENT FOR FOSTER CARE AND
PREVENTIVE SERVICES
Text is current through October 31, 2005.

Section 430.11 Appropriateness of placement.

(a) The type and level of a foster care placement for a particular child shall be considered appropriate for the purposes of this section if the standard for continuity in the child's environment and the standards for appropriate level of placement, as set forth in subdivisions (c) and (d) of this section, are met.

(b) The requirements of this section shall pertain to all children placed in foster care for whom a uniform case record, as described in Part 428 of this Title, is required. The appropriateness of a foster care placement shall be documented on the forms prescribed by the department in Part 428, according to the standards for documentation defined in the standard for continuity in the child's environment and the standards for appropriate level of placement, as set forth in subdivisions (c) and (d) of this section. In the absence of documentation in the uniform case record, the placement shall be deemed inappropriate.

(c) Continuity in the child's environment.

(1)

(i) Standard. Whenever possible, a child shall be placed in a foster care setting which permits the child to retain contact with the persons, groups and institutions with which the child was involved while living with his parents, or to which the child will be discharged. It shall be deemed inappropriate to place a child in a setting which conforms to this standard only if the child's service needs can only be met in another available setting at the same or a lesser level of care.

(ii) Any Indian child who is placed into foster care pursuant to the provisions of [section 384](#), [384-a](#) or [384-b of the Social Services Law](#) or article 3, 7 or 10 of the Family Court Act shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. Placement in accordance with the order of preference set forth in subdivision (f) of section 431.18 of this Title supersedes other continuity factors in the placement of an Indian child. Any placement made pursuant to this subparagraph shall, in the absence of good cause to the contrary, as defined in section 431.18(f)(2) or (g)(2) of this Title, be made according to the preferences set forth in section 431.18(f) of this Title.

(2) Documentation. The uniform case record, as described in Part 428 of this Title, shall:

(i) show in the first uniform case record form required after the child's placement in his current setting that the child has been placed in a setting which enables him or her to maintain ties to his or her previous school, neighborhood, peers and family members, or show the reasons why such placement was not practicable or in the best interests of the child;

(ii) show in the first visiting plan required by the uniform case record after the child's placement in his current setting that biweekly visits with the parents or significant others

are possible or the reasons why a placement was chosen which made such visits impossible;

(iii) show in the first uniform case record form required after the child's placement in his current setting that the child is placed under the supervision of a person or persons of a religious faith the same as that of the child or is placed with an agency, association, corporation, society or institution which is under the control of an incorporated or unincorporated church, as defined in article one of the Religious Corporation Law, representing a religious faith the same as that of the child, or, if that is not possible, show that the child's religious faith will be protected, and preserved in the current setting, or show the reasons why placement was not practicable or in the best interests of the child;

(iv) [Reserved]

(v) for foster care placement involving Indian children, contain documentation which evidences the efforts made by social services districts to comply with the order of preference set forth in section 431.18(f) of this Title. Information concerning efforts by social services districts to comply with the order of preference contained in the case record shall be made available to the Indian child's tribe and the Secretary of Interior upon request;

(vi) if the setting is a foster family home or agency-operated boarding home, document in the first uniform case record form required after the placement of the child in the current setting that a determination has been made of the appropriateness of placing the child with his or her siblings or half-siblings in accordance with the provisions of section 431.10 of this Part;

(vii) the uniform case record must include a written consideration of the safety and appropriateness of the placement;

(viii) if the child has been placed in a foster care placement a substantial distance from the home of the parents of the child or in a state different from the state in which the parent's home is located, the uniform case record must contain documentation why such placement is in the best interests of the child; and

(ix) if the child has been placed in foster care outside of the state in which the home of the parents of the child is located, the uniform case record must contain a report prepared every 12 months by a caseworker either of the authorized agency with case management and/or case planning responsibility over the child or the state in which the home or facility is located documenting the caseworker's visit to the child's placement within the 12-month period.

(3) For purposes of paragraphs (1) and (2) of this subdivision, the term Indian child shall have the meaning which is given to such term by subdivision (a) of section 431.18 of this Title.

(d) Standard for appropriate level of placement.

(1) The most appropriate level of placement for each child will always be considered to be the least restrictive and most homelike setting in which the child can be maintained safely and receive all services specified in his or her service plan.

(2) Family foster homes and agency boarding homes. The placement of a child in a foster family home or an agency boarding home shall be considered placement at an appropriate level for the purposes of this section, if the services required in the most recent assessment and service plan required by the uniform case record are available to the child as part of the placement.

(3) Group homes and group residences.

(i) Standard. The placement of a child in a group home or group residence shall be considered placement at an appropriate level of care for the purposes of this section only if:

(a) the child is 10 years of age or older and the necessity of the child's placement is based, in whole or in part, on one or both of the reasons described in paragraphs (c)(5) and (6) of section 430.10 of this Part, as child service needs or pregnancy; and

(b) the services or supervision needed by the child cannot currently be provided in a foster boarding home setting.

(ii) Documentation. The first uniform case record form required after the placement of the child in the current setting shall show the child's age and contain adequate documentation of the necessity of placement, and shall specify the services needed by the child which cannot be provided in a family foster home or agency boarding home.

(iii) Subparagraph (i) of this paragraph notwithstanding, the placement of any child 10 years of age or older in a group home or group residence shall be deemed placement at an appropriate level even when the services or supervision needed by the child which cannot be provided in a foster boarding home setting cannot be specified, if one or more previous placements in family foster homes or agency boarding homes have been terminated due to the child's refusal to stay in the home or the foster parents' refusal is due to the child's behavior. In this event, the first uniform case record form required after the placement of the child in the current setting shall contain a description of the previous placements and the reasons for their terminations.

(iv) Subparagraph (i) of this paragraph notwithstanding, the placement of any child in a group home or group residence shall be deemed placement at an appropriate level if such placement is necessary for the child to remain with his mother and/or siblings. In this event the first uniform case record form required after the placement of the child in the current setting shall indicate:

(a) that the child or his mother requires foster care due to pregnancy, as defined in paragraph (c)(6) of section 430.10 of this Part; or

(b) that one or more siblings requires care in a group home or group residence and that it is in the best interests of the child to maintain him or her with his or her siblings.

(v) Subparagraph (i) of this paragraph notwithstanding, the placement of any child 10 years of age or older in a group home or group residence shall be deemed placement at an appropriate level for the purposes of this section, if the child has been a victim of incest and this is shown in the first uniform case record form required after the placement of the child in the current setting to be one of the reasons for placement.

(vi) Subparagraph (i) of this paragraph notwithstanding, the placement of any child 10 years of age or older in a group home or group residence shall be deemed placement at an appropriate level, if the first uniform case record form required after the placement of the child in the current setting shows that the parents resist placement of the child in a foster family home or agency boarding home, that the group home or group residence would provide better access to the parents than would a foster family home or agency boarding home, that the child's permanency planning goal is discharge to parents, and that the State Commissioner of Social Services or his or her representative has approved placement in this setting.

(4) Institutional placement.

(i) Standard. The placement of a child in an institution, as defined in Part 442 of this Title, other than a group residence, shall be considered placement at an appropriate level for the purposes of this section only if the child is 12 years of age or older and:

(a) the necessity of the child's placement is based, in whole or in part, on one or more reasons described in paragraph (c)(5) of section 430.10 of this Part as child service needs; and

(b) if services or a level of supervision are needed by the child which cannot currently be provided in any other level of care and which can be provided in the institution in which the child is placed.

(ii) Documentation. The first uniform case record form required after the placement of the child in the current setting shall show the age of the child, and contain adequate documentation of the necessity of placement, which services or level of supervision needed by the child cannot currently be provided in any other level of care, and efforts to obtain necessary services or supervision in a less restrictive level of care.

(5) Supervised independent living.

(i) Standard. The placement of a child in supervised independent living shall be considered placement at an appropriate level for the purposes of this section only if the child:

(a) is at least 16 years of age and (1) has been in foster care for at least 90 consecutive

days during period immediately preceding the date on which the child entered the program, or (2) is in the care and custody of a social services official but has been discharged from foster care on a trial basis at the time that the child entered the program;

(b) has a permanency planning goal of discharge to independent living; and

(c) will be discharged from care within 12 months after placement in the program and has an established service plan for discharge; a child in a supervised independent living program may be discharged from care within 18 months after placement in the program if it is determined that the child would be unable to complete a vocational training or educational program if the child was discharged from the program to an alternative address within 12 months after placement in the program.

(ii) Documentation. The first uniform case record form required after placement of the child in the program must show that the child was at least 16 years of age and was in foster care for at least 90 consecutive days during the period immediately preceding the date on which the child was placed in supervised independent living, or was in the care and custody of a social services official but had been discharged from foster care on a trial basis at the time the child entered such program, that he or she has a permanency planning goal of discharge to independent living, and that the anticipated discharge date is no later than 12 months after the placement of the child in supervised independent living, unless the child will be unable to complete a vocational training or educational program if the child was discharged from the supervised independent living program to an alternative address. In such instances the discharge date must be no later than 18 months after the child entered the program, and documentation must be provided that details why the child would be unable to continue in the vocational/educational program if the child was discharged to an alternative address.

(6) Child placed in facilities operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities.

(i) Standard. The placement of a child in a facility operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities shall be considered placement at an appropriate level of care for the purposes of this section only if the child meets the criteria for admission to a facility operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities.

(ii) Documentation. For children placed in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities, the name and location of such facility shall be included in the uniform case record. The inclusion of such information in the case record shall be deemed to fulfill the documentation requirements of this subparagraph.

(e) Court placements. Notwithstanding any other provision of this section, a placement shall not be subject to denial of reimbursement due to inappropriate placement if a court has ordered that the child be placed in that particular setting. The first uniform case record form required after the placement of the child in the current setting shall include either a copy of the court order or a description of the terms of the order. In the event that a utilization review of the case has been completed, and has found that the child's placement does not comply with the requirements of this section, other than that defined in this subdivision, the district shall petition the court for a rehearing of the case within 30 days of the notification to the district that the placement is not appropriate. The district shall submit the finding of the utilization review to the court as documentation for the court review.

(f) Notwithstanding any other provision of this section, the placement of a child under 10 years of age in a group home or group residence and the placement of a child under 12 years of age in an institution other than a group residence shall be deemed necessary and excepted from the age standards, as defined in clause (d)(3)(i)(a) and subparagraph (d)(4)(i) of this section, only if:

(1) the child's service needs, as documented in the first uniform case record form required after placement in such setting require:

(i) sufficient supervision that professional staff are required who are awake and on duty

24 hours per day, where professional staff shall include all those whose primary responsibility is to supervise, teach, provide therapy to, or otherwise deal directly with the children; and

(ii) at least three of the following:

(a) intensive therapy from a licensed psychologist or psychiatrist or a certified social worker;

(b) for a group home or group residence onsite medical staff on a daily basis, and for institutions onsite medical staff at least 16 hours per day;

(c) a licensed speech pathologist;

(d) a licensed physical therapist;

(e) any other licensed or certified therapist;

(f) onsite educational services;

(g) structured recreational therapy; and

(2) the group home, group residence, or institution has been granted written approval to care for children of these ages by the commissioner of the State Department of Social Services or by his or her representative, and the review of the agency's program which precedes this approval includes consideration of the ratio of staff to children in care; or

(3) if the considerations in paragraph (1) or (2) of this subdivision are not met but the placement has been approved by the State Commissioner of Social Services or by his or her representative.

Historical Note

Sec. filed Feb. 2, 1982; amds. filed: Oct. 17, 1985; April 24, 1986; July 18, 1986; Dec. 22, 1986; Feb. 1, 1988; July 5, 1988; Oct. 2, 1995; Dec. 3, 1998 as emergency measure; March 3, 1999 as emergency measure eff. March 3, 1999; March 3, 1999 eff. March 24, 1999. Amended (c)(2).

<[General Materials \(GM\)](#) - References, Annotations, or Tables>

CASE NOTES:

Where children, found to be neglected pursuant to [Family Ct Act §1051\(a\)](#), could not be placed with named caretakers who were deemed "unsuitable" due to their lack of independent resources and means to undertake care and custody of these children without sustained oversight, intervention and provision of services, placement of children with Commissioner of Social Services (CSS) pending certification of friends and remote relations as foster parents was proper under regulation. [Matter of Coop, 1988, 531 N.Y.S.2d 449, 140 Misc.2d 951](#)

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