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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 430.12 Diligence of effort.

(a) A social services district shall be considered to be exercising diligent efforts to achieve the permanent discharge of a child in foster care only if it complies with the requirements for casework activity and documentation contained in this section.

(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. Compliance with these requirements shall be documented on the forms prescribed by the department in Part 428 according to the standards for documentation defined under the general requirements, the standards for discharge to parents, the standards for discharge to adoption, the standards for discharge to independent living, and the standards for discharge to adult residential care, as set forth in subdivisions (c)-(g), respectively, of this section. To the extent permitted by the Mental Hygiene Law and the regulations of the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities, social services officials shall obtain copies of the case records and service plans and any updates to such records and plans for children whose care and custody have been transferred to such officials and who are receiving care in facilities operated or supervised by such offices. Such records, plans and updates shall be made a part of the uniform case record. It shall be the responsibility of the district to show that the requirements of this section have been met, and a failure to provide evidence that the requirements have been met shall be deemed equivalent to a failure to make diligent efforts to achieve the permanent discharge of the child.

(c) General requirements.

(1) Consistency.

(i) Standard. The uniform case record must demonstrate consistency among the service needs identified as contributing to the child's need for placement, the goals or outcomes and services planned for to meet these needs and the services which are provided to the child, members of his or her family or other significant resource persons. For children who have been placed in facilities operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, the services provided by that facility will be deemed to fulfill the requirements of this subparagraph with respect to the child's service needs.

(ii) Documentation.

(a) If the child's placement is deemed necessary, due at least in part to a reason described in paragraphs (c)(1)-(4) of section 430.10 of this Part as health and safety of child, parental refusal or surrender, parent service need, or parent unavailability, and the child's permanency planning goal is return to parents or relatives, the most recent assessment and service plan or risk assessment and service plan required by the uniform case record must contain client goals or outcome and services tasks or activities to meet

these needs;

(b) if the child's placement is deemed necessary due at least in part to reasons described in paragraphs (c)(5)-(6) of section 430.10 of this Part as child service needs or pregnancy, specific client goals or outcomes to meet these needs must be contained in the assessment and service plan or risk assessment and service plan required by the uniform case record;

(c) the assessment and service plan or risk assessment and service plan required by the uniform case record must show that services have been provided according to the service plan for family and child, or that reasonable attempts have been made to provide those services;

(d) information concerning the services which are provided to children in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities and which is forwarded by such facilities to the social services district responsible for maintaining the uniform case record must be included in the uniform case record and will be deemed to fulfill the documentation requirements of this subparagraph with respect to the child's service needs;

(e) if a minor parent is in foster care and has residing with him or her his or her child or children, and such child or children are not in the care and custody or custody and guardianship of the local commissioner of social services, the assessment and service plan required by the uniform case record must show that the needs of the child or children of the minor parent have been assessed and that goals or outcomes necessary to meet these needs must be contained in the assessment and service plan required by the uniform case record; and

(f) if the permanency plan for the child is adoption or placement in a permanent home other than that of the child's parent, the uniform case record must document the steps taken to find an adoptive family or other permanent living arrangement for the child; to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, such documentation must include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems. Such documentation must reflect reasonable efforts to place the child in a timely manner and to finalize the placement of the child.

(2) Service plan reviews.

(i) Standard. A panel of at least two people must participate in the development and review of each comprehensive assessment and service plan or comprehensive risk assessment and service plan as required under section 428.7 or 428.12 of this Title and all subsequent service plans as required in the reassessment and service plan reviews as required under section 428.9 of this Title or the risk reassessment and service plan as required under section 428.13 of this Title. The panel must include the case planner and an administrator or other person not responsible for the case management or delivery of services to that case. The review panel must convene a case conference, with the review panel members and the parent(s) and child present, as required in clauses (a) and (b) of this subparagraph, to review and develop a service plan for the case. The plan which is developed by the panel must be approved by the case manager. The case conference must be held no earlier than the first day of the month preceding the month in which the plan is due to be approved by the case manager as defined in section 428.2 of this Title, or if case planning responsibility has been delegated to a purchase of service provider, the case conference must be held no earlier than the first day of the month preceding the month in which the plan is due to be submitted to the case manager as specified in the purchase of service agreement.

(a) Efforts must be made to involve the following persons as participants in the development and review of the service plan and in the case conference:

(1) the child, if he or she is 10 years of age or older, unless there is a documented reason related to the current necessity of placement why the child should not be involved;

(2) the parent(s), guardian(s), or, in the case of a child whose permanency planning goal

is discharged to a relative, the relative to whom the child will be discharged;
(3) in the case of an Indian child, the child's tribe if known, and where possible, a qualified expert witness as defined in section 431.18(a)(5) of this Title; and
(4) the child's current foster parent, caretaker relative, or pre-adoptive parent presently providing care for the child. Such foster parent, caretaker relative or pre-adoptive parent must be provided with notice of and an opportunity to be heard in any service plan review.

(b)

(1) The efforts to involve the participants listed in clause (a) of this subparagraph must include, but are not limited to:

(i) written notice to each participant at least two weeks prior to the case conference inviting them to attend, giving the date, time and location of the conference and informing them that they may be accompanied by a person(s) of their choice; and
(ii) where possible, face-to-face contact by the case planner with the invited participants who were unable to attend the case conference no later than 30 days after the date the case conference was held.

(2) During the face-to-face contact required by item (1)(ii) of this clause, those invited participants who were unable to attend the case conference, with the exception of the parent of the child, must be given a summary of the service plan for the child which at a minimum must include the following:

(i) new or continued goals or outcomes and anticipated completion dates when goals have been established;

(ii) tasks which describe the activities to be completed within the upcoming review period, and the family members and/or the service provider who are to perform each activity;

(iii) an updated visiting plan for children in foster care;

(iv) documentation stating the involvement of the parent, child and any others in the development of the service plan as required by sections 428.3(d) and 428.9 of this Title, and a listing of the participants in the service plan review; and

(v) a review of the previous service plan, which describes the progress in meeting or completing previously stated goals or outcomes and tasks or activities, the participation of family members in the process, and the service provision problems, if any, during the period under review.

Upon presentation of the service plan documents described in subclause (2) of this clause to the invited case conference participants, the contents will be discussed, or, in the event that such face-to-face contact is not possible, a letter stating that a case conference was held will be sent to the invited participant(s). The letter must inform the invited participant(s) that a copy of the document described in subclause (2) of this clause will be made available to them upon request.

(3) For a child in foster care, the parent of the child must be given a copy of the family and child(ren)'s service plan, consistent with article 27-F of the Public Health Law.

(c) A written statement of the conclusions and recommendations from the review or a copy of the service plan shall be made available to all participants, subject to the confidentiality requirements of Part 357 of this Title.

(ii) Documentation. The assessment and service plan or risk assessment and service plan required by the uniform case record must indicate the names and, where appropriate, the title(s) of the panel members, the names of the invited participants who attended the case conference and the date of the conference. Attendance by the invited participants or their representative will indicate that the two-week notice requirement of clause (i)(b) of this paragraph has been met. When the invited participants do not attend the case conference the efforts made to involve them in the case conference and the efforts made pursuant to clause (i)(b) of this paragraph must be documented.

(3) Casework contacts.

(i) Standard. Casework contacts with the child, the child's caretakers, the child's parents or relatives, if any, must adhere to the standards mandated in section 431.16 of this Title. Notwithstanding any other provision of this paragraph, the standards concerning

casework contacts with the child are deemed to be met by the district for any child who has been placed in a facility operated or supervised by the Office of Mental Health, Office of Mental Retardation and Developmental Disabilities or the Department of Health.

(ii) Documentation. The progress notes shall show the extent to which these contacts are occurring pursuant to department regulations, the location of the contacts and the content of the contacts. Information concerning the services which are provided to children in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities and which is forwarded by such facilities to the social services district responsible for maintaining the uniform case record shall be included in the uniform case record and shall be deemed to fulfill the documentation requirements of this subparagraph.

(4) Discharge planning.

(i) Standard. For any child 18 or under who is discharged from foster care, the district shall consider the need to provide preventive services to the child and his family subsequent to his discharge.

(ii) Documentation. The uniform case record form to be completed upon discharge of the child shall show either the recommended type of preventive services and the district's attempts to provide or arrange for these services, or the reasons why these services are deemed unnecessary.

(d) Discharge to parents. The following requirements shall pertain to all children in foster care placement whose permanency planning goal is discharge to parents or relatives:

(1) Visiting.

(i) Standard. Districts must plan for and make efforts to facilitate at least biweekly visiting between the child and the parents or caretakers to whom the child is to be discharged, unless such visiting is specifically prohibited by court order, or by the transfer of custody agreement, or the child is placed in a facility operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities or because the placement that was chosen pursuant to the standards expressed in section 430.11 of this Part makes biweekly visitation an impossibility. In the latter case, the district, at a minimum, must, except as herein after provided, plan for and facilitate monthly visits between the parent and the child. In the case of children 13 years or older placed by the court as PINS or juvenile delinquents in an institution less than 100 miles from their homes, and the placement that was chosen, pursuant to the standards expressed in section 430.11 of this Part, makes biweekly visitation impossible, the district, at a minimum, must plan for and facilitate quarterly visits between the parent and the child; however, at the time a service plan for discharging the child is developed, appropriate visits, of a greater frequency than quarterly, between the child and the family must be arranged. In the case of children 13 years or older placed by the court as PINS or juvenile delinquents in an institution 100 miles or more from their homes, the standards contained in this subparagraph do not apply. At the time the service plan for discharging the child is developed, appropriate visits between the child and the family must be arranged. Any act to limit or terminate visiting for children voluntarily placed in foster care must comply with the requirements set forth in section 431.14 of this Title. The efforts of the districts to facilitate at least biweekly visiting must include:

(a) provision of financial assistance, transportation or other assistance which is necessary to enable biweekly visiting to occur;

(b) follow-up with the parent or relative when scheduled visits do not occur in order to ascertain the reasons for missed visits and to make reasonable efforts to prevent similar problems in future visits. Any act to limit or terminate visiting for children voluntarily placed in foster care must comply with the requirements set forth in section 431.14 of this Title; and

(c) arranging for visits to occur in a location that assures the privacy, safety and comfort of the family members. In no case, except where a family court has ordered supervised visiting, will congregate visits involving members of more than one family satisfy the provisions of this subparagraph.

(ii) Documentation must include:

(a) a visiting plan as required by the uniform case record which includes the planned frequency and location of the visits, the name of the child and the names of the persons who are scheduled to visit the child and any arrangements or assistance necessary to facilitate biweekly or monthly visiting, and if supervised visits are planned, the reasons for such supervision;

(b) indications in the progress notes or in the visiting plan required by the uniform case record of the extent to which visiting has occurred in accordance with the visiting plan and the follow-up efforts which were undertaken when scheduled visiting has not occurred;

(c) indications in the visiting plan required by the uniform case record of the grounds for any attempt to limit or terminate visiting rights, including any documents submitted to the court; and

(d) where appropriate, a statement that the child has been placed in a facility which is operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities.

(2) Lack of progress.

(i) Abandonment.

(a) Standard. If a parent evinces an intent to forgo his or her parental rights and obligations, as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency, so that the child is considered an abandoned child pursuant to [section 384-b of the Social Services Law](#), and no mitigating circumstances exist, then an action to terminate parental rights must be initiated within 60 days of the completion of the assessment and service plan or risk assessment and service plan required by the uniform case record which documents these circumstances.

(b) Documentation. The assessment and service plan or risk assessment and service plan required by the uniform case record must document the evidence of the parent's intent to forgo his or her parental rights and obligations. The progress notes must indicate the date that the petition to terminate parental rights is filed.

(ii) Permanent neglect.

(a) Standard. If a parent has failed for a period of one year to substantially and continuously or repeatedly maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the child so that the child is considered a permanently neglected child pursuant to [section 384-b of the Social Services Law](#), and no mitigating circumstances exist, then an action to terminate parental rights must be initiated within 60 days of the completion of the assessment and service plan or risk assessment and service plan required by the uniform case record which documents these circumstances, as specified in section 431.9 of this Title and [section 384-b of the Social Services Law](#).

(b) Documentation. The assessment and service plan or risk assessment and service plan required by the uniform case record must document the lack of contact or the parents' inability to plan for the child and the district's attempts to encourage and strengthen the parental relationship. The progress notes must indicate the date that the petition to terminate rights has been filed.

(iii) Discharge time.

(a) Standard. Every child with a permanency planning goal of return to parents or relatives who has been in care for 15 of the most recent 22 months must be discharged from care or the social services district must comply with the standards for the filing of a petition to terminate parental rights as set forth in section 431.9 of this Title.

(b) Documentation. When the child has been in care for 15 of the most recent 22 months the most recent assessment and service plan or risk assessment and service plan required by the uniform case record must show that the child has been discharged from foster care or that a petition to terminate parental rights has been filed in accordance with the provisions set forth in section 431.9 of this Title, unless the plan shows that the child is in care in the home of a relative; or a compelling reason why it would not be in

the best interest to initiate termination proceedings; or that services have not been provided to the family of the child which are necessary for the safe return of the child to his or her family.

(e) Discharge to adoption. The following requirements pertain to all children in a foster care placement whose permanency planning goal is discharge to adoption.

(1) Children not legally free.

(i) Standard. For children who are not legally free for adoption, an action to legally free the child must be initiated within 30 days of the establishment of the permanency planning goal of adoption. The child must be freed within 12 months after the establishment of the permanency planning goal of adoption.

(ii) Documentation. The progress notes must indicate when the action has been initiated and must include copies of the petition and any documents submitted in support of the petition or descriptions of the content of the documents. In addition, the date that the child was freed must be noted in the progress notes. If the case does not meet the standard for freeing the child within 12 months, the district will be considered to be out-of-compliance with the standard unless, at the time of the first recertification after the 12-month period, the assessment and service plan or risk assessment and service plan required by the uniform case record shows that a petition to terminate parental rights was filed within 120 days of the date the permanency planning goal of adoption was chosen and the delay was caused solely by the court and not by the district or agency caring for the child, or that the court refuses to terminate parental rights.

(2) Children legally free.

(i) Standard. Children who are legally free for adoption but not in an adoptive home must be placed in an adoptive home within six months after the child was freed for adoption. For children in facilities operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, the district will be deemed in compliance with this standard during the time the child remains in the facility. If the child is discharged from the facility to a foster care placement, the time in the facility when the child was legally free will be considered to be part of the total time the child is legally free but not in an adoptive home and the documentation requirements specified below will apply.

(ii) Indian children. An Indian child who is legally free for adoption must, in the absence of good cause to the contrary, be placed in accordance with the preferences set forth in subdivision (g) of section 431.18 of this Title.

(iii)

(a) Documentation. The progress notes must indicate when the child was placed in the adoptive home, or if the child was not placed in such home within the time frame stated in the standard. In instances where a handicapped or hard-to-place child was not placed in an adoptive home within six months, the progress notes must indicate that inquiry was made of the adoptive placement registry within three months of the date the child became legally freed and the results of such inquiry. The first assessment and service plan or risk assessment and service plan required by the uniform case record after the six-month period must indicate that an attempt will be made to obtain a subsidized adoptive placement for the child, or record the reason the district believes that subsidy will not be required to complete the adoptive placement before the end of the 12th month. Failure to place the child in an adoptive home within 12 months from the date he or she was freed constitutes noncompliance with this standard, unless the child's permanency planning goal, as recorded on the assessment and service plan or risk assessment and service plan required by the uniform case record is other than discharge to adoption, or unless the State Commissioner of Social Services, or his or her representative, has approved a continuation of the efforts to place the child in an adoptive home. Such approval will not be given for more than 12 months without a subsequent review of the case by the State Commissioner of Social Services or his or her representative. If an agreement to adopt the child has been signed by the prospective adoptive parents, and the prospective parents then refuse to maintain the child in the home or otherwise to complete the adoptive process, as documented in the most recent

assessment and service plan or risk assessment and service plan required by the uniform case record, the date of that refusal is deemed to be the date on which the child was freed. During the time the child is in a facility operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities, the documentation requirements of this subparagraph will be deemed to have been met for such child.

(b) Each social services official who places an Indian child in an adoptive home must maintain a record of such placement which evidences the efforts made to comply with the order of preference set forth in section 431.18(g) of this Title. Information concerning efforts by social services districts to comply with the order of preference contained in the case record must be made available to the child's Indian tribe and the Secretary of Interior upon request.

(iv) For purposes of this paragraph, the term Indian child will have the meaning which is given to this term by section 431.18 of this Title.

(3) Children in adoptive placement.

(i) Standard. For children who are legally free, in an adoptive home, but whose adoptions are not yet final, such adoptions must be finalized within 12 months after the child is placed in an adoptive home.

(ii) Documentation. The progress notes must indicate the date of finalization or, if the child's adoption was not finalized in the required time frame, the district will be considered to be out-of-compliance with the standard, unless, at the time of the first recertification after the six-month period, the assessment and service plan or risk assessment and service plan required by the uniform case record shows that the delay was caused solely by the court, and not by the district or agency caring for the child, or that the adoptive parents have delayed finalization.

(f) Independent living. The following requirements pertain to all children in a foster care placement whose permanency goal is discharge to independent living and, where indicated, to children deemed to be discharged to independent living or deemed to have a goal of discharge to independent living. For the purposes of this subdivision only, a child deemed to be discharged to independent living means a child 16 years of age or older who has resided in foster care for at least 12 months within the past 36 months and who has been discharged to parents or relatives. For the purposes of this subdivision only, a child deemed to have a goal of independent living means a child 16 years of age or older who resided in foster care for at least 12 months within the past 36 months and who has a goal of discharge to parents or relatives or a goal of adoption.

(1) Setting of goal.

(i) Standard. The child is 14 years of age or older, or is placed in a foster home with an approved relative as defined by section 443.1(f) of this Title for this goal to be established and it is determined to be in the child's best interests that he or she remain in foster care and not return to his or her parents or be adopted until the child reaches the age of 18. No other child may have a goal of discharge to independent living unless the court has refused, after a hearing to free the child for adoption, or unless that goal is approved by the Office of Children and Family Services.

(ii) Documentation. The first assessment and service plan or risk assessment and service plan required by the uniform case record at the time of the selection of the permanency planning goal must indicate the reasons for choosing this goal rather than "discharge to parents or relatives" or "discharge to adoption," and must summarize efforts to accomplish either or both of these permanency goals before this goal was selected.

(2) Preparation for discharge.

(i) Standard.

(a) The district must ensure the provision to all children with a goal of discharge to independent living, or deemed to have a goal of discharge to independent living, of structured programs of vocational training and independent living skills, including at least two days per year of formalized group instruction in independent living skills. Vocational training includes, but is not limited to, training programs in a marketable skill or trade or formal on-the-job training. Children enrolled in secondary education, taking academic

courses and receiving at least passing grades which if maintained would lead to graduation prior to the child's 20th birthday, and children enrolled in full-time study at an accredited college or university are deemed to meet the requirement for vocational training. Vocational training must begin at the time the goal of discharge to independent living is selected or deemed to be selected or by the child's 16th birthday, whichever is later, and must continue without interruption until the child is discharged to independent living, unless the child is employed in a paying job for which such child's vocational training has prepared him or her, or is employed in a paying job at an hourly rate which would provide income, if the child was employed on a full-time basis, equal to or greater than 150 percent of the poverty level for a family of one as established by the Federal Department of Health and Human Services, or has passed a test approved or administered by the agency, school, or firm providing the training, or has otherwise successfully completed a course of vocational training as evidenced by a certificate or some other document demonstrating completion. Independent living skills include formalized instruction, including supervised performance in job search, career counseling, apartment finding, budgeting, shopping, cooking, and house cleaning. Instruction in these skills must begin at the time the goal is selected or by the child's 14th birthday, whichever is later, and must continue without interruption until the child is discharged, unless the child has demonstrated competency in all of the above skills, either through a test approved by the department or through an assessment based on observation of the child's performance; in either case, the child's on-going application of those skills must be deemed to meet the standard. The vocational training requirements of this subparagraph cannot apply where the child demonstrates an inability to participate in and benefit from vocational training because of the child's inability to read or compute at an appropriate grade level. Where a child is found to be unable to benefit from such training, remedial education must be provided to prepare the child to participate in and benefit from vocational training. In the case of children who have been placed in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities, the services provided by that facility are deemed to fulfill the requirements of the standard contained in this subparagraph.

(b) Subject to the availability of State and Federal funds therefor, the district must ensure that a monthly independent living stipend is regularly provided to each child 16 years of age or older who has, or is deemed to have, a goal of discharge to independent living and who, according to his or her case plan, is actively participating in independent living services. The independent living stipend is to be provided in addition to the regular allowance the child is entitled to receive pursuant to section 441.12(a) of this Title. The purposes for providing an independent living stipend are: to give the child incentive to participate in independent living services, to teach the child to manage money, and to provide the child with a means to accumulate savings to assist him or her in the transition to independent living. The amount of the monthly stipend must be in accordance with the following schedule:

Age	Monthly stipend
16	\$20.00
17	25.00
18	30.00
19	35.00
20	40.00

Depending upon the child's financial needs and abilities, the district must pay the entire monthly stipend in one lump sum payment or in two or more smaller payments spread over the month. Stipend payments to the child must be suspended for any period of time that the child, according to his or her case plan, is not actively participating in independent living services. A child placed in a facility operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities is not eligible to receive an independent living stipend.

(ii) Documentation.

(a) Each assessment and service plan or risk assessment and service plan required under Part 428 of this Title must show the type, location, duration, and intensity of the vocational training and instruction in independent living skills being provided to the child, as well as the level of achievement the child has attained. If the required vocational training and/or instruction in independent living skills has not been provided, the case record must document that the reason for the failure to complete the training was because of the child's unwillingness to cooperate, or the child's employment in a job as referenced in clause (a) of subparagraph (i) of this paragraph, or the child's passing of a test displaying competence in relevant job skills and independent living skills, or the child's inability to participate in and benefit from vocational training because of educational deficiencies. If the reason for the failure to complete the training or instruction is the child's unwillingness to cooperate, the case record must document the efforts made by the district to encourage participation by the child in the training or instruction. Any assessment that the child cannot participate in and benefit from vocational training because of the lack of reading or computation skills must be contained in the uniform case record. The record must contain the date of the assessment of educational deficiencies, a plan of remediation including the remedial services provided to the child and the date of anticipated completion of the plan which under no circumstances may be the same as or subsequent to the date of planned discharge. This plan must be designed to enable the child to participate in and benefit from vocational training. Information concerning the services which are provided to children in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities and which is forwarded by such facilities to the social services district responsible for maintaining the uniform case record must be included in the uniform case record and will be deemed to fulfill the documentation requirements of this subparagraph.

(b) Each assessment and service plan or risk assessment and service plan required by the uniform case record also must show the amount and frequency of the independent living stipend payments made to the child and the child's active participation in independent living services as outlined in the case plan. If the child did not receive an independent living stipend for any period of time, the case record must document the reason the child did not receive a stipend or the reason that the stipend was suspended. Such documentation must include a description of how and why the child was not actively participating in independent living services as outlined in the case plan or that the child was placed in a facility operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities.

(3) Discharge.

(i) Standards.

(a) For each child discharged to independent living, the district must identify any persons, services or agencies which would help the child maintain and support himself and must assist the child to establish contact with such agencies, service providers or persons by making referrals and by counseling the child about these referrals prior to discharge. This must include efforts to assist the child to reestablish contacts with parents, former foster parents or other persons significant to the child.

(b) No child can be discharged to independent living, unless such child has received written notice of such discharge at least 90 days prior to the date of discharge and has had the goal of independent living continuously for a six-month period immediately prior to discharge. This notice requirement does not apply where the child has voluntarily departed from the foster care placement without the consent of the district and has been absent from said placement for 60 days.

(c) No child may be discharged to independent living, unless the child has a residence other than a shelter for adults, shelter for families, single-room occupancy hotel or any other congregate living arrangement which houses more than 10 unrelated persons and there is a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge. This requirement does not apply to a child

who is a member of the military or job corps or who is a full-time student in a post-secondary educational institution or where the child has voluntarily departed from the foster care placement without the consent of the district and has been absent from said placement for 60 days.

(ii) Documentation.

(a) Documentation includes goals or outcomes and services in the service plan and a summary by the district of the efforts made and their results in the assessment and service plan or risk assessment and service plan required by the uniform case record.

(b) A copy of the written notice of discharge must be maintained in the case record until the child attains the age of 21, showing the date the child received the notice. In addition, the child's service plans prepared pursuant to Part 428 of this Title must show that the child has had the goal of independent living continuously for a six-month period immediately prior to discharge. If the notice is not received by the child because the child is voluntarily absent from the foster care placement without the consent of the district, the case record must document when the child left the foster care placement, the voluntary nature of the absence of the child, the absence of consent by the district and the efforts made by the district to make contact with the child to encourage the return of the child to the placement.

(c) The plan amendment or service plan required by the uniform case record must include a description of the living arrangements secured for the child, together with an assessment of the permanency of those arrangements. If the child is discharged without the district securing living arrangements for the child, the case record must document that the reason for the failure to secure such arrangement has been that the child is a member of the military or job corps or a full-time student in a post-secondary educational institution or has voluntarily departed from the foster care placement without the district's consent and has been absent from the placement for 60 days.

(4) Post-discharge.

(i) Standards.

(a) Every child discharged to independent living and every child deemed to have been discharged to independent living must remain in a status of trial discharge for at least six months after discharge and must remain in the custody of the local commissioner during the entire period of trial discharge. Trial discharge may continue at the discretion of the district up to the age of 21 if the reassessment and service plan review indicates either the need for continued custody or a likelihood that the child may need to return to foster care. During the period of trial discharge, the district must provide after-care services to the child, including casework contacts with the child, with the number of face-to-face contacts and in-home contacts equal to those required for that child pursuant to section 431.16 (c) of this Title during the six months immediately preceding the child's discharge. In addition, after-care services include the provision of services consistent with the service needs of the child identified in the uniform case record which would enable the child to live independently after he or she is discharged from care. In the event that the child becomes homeless during the period of trial discharge, the district must assist the child to obtain housing equivalent to that authorized by clause (c) of this subparagraph. Under no circumstances may a district refer or place a child during the 30-day period following the child's becoming homeless in a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than 10 unrelated persons. If appropriate housing is not available within 30 days of the date the child becomes homeless, the district must place the child in a suitable foster boarding home, agency boarding home, group home or institution consistent with section 430.11 of this Part. The provisions of this clause relating to trial discharge does not apply where a court order terminates the district's custody of the child or where the child reaches the age of 21.

(b) After the district's custody of the child has been terminated whether by court order or by the district's own action, the district must maintain supervision of the child until the child is 21 years of age, where the child has been discharged to independent living or is deemed to have been discharged to independent living and has permanently left the

home of his or her parents or relatives prior to the termination of the district's custody. Supervision includes at least monthly contact with the child, unless the child has maintained adequate housing and income continuously for the past six months, in which case at least quarterly contacts shall occur, either face-to-face or by telephone. Where monthly contacts are required, face-to-face contacts on a quarterly basis must occur with the remaining contacts being either face-to-face or by telephone. This requirement of quarterly face-to-face contacts does not apply to children living 50 miles outside of the district. In all cases, the district must provide referral to needed services, including income and housing services, with sufficient follow-up efforts to ensure that the child has begun to receive the services for which he or she was referred. The contact requirements of this clause must be satisfied when the child has refused contact or cannot be located during a 60-day period in which two face-to-face or telephone contacts and one in-home contact have not been successful. The contact requirements mandated by this clause must resume when the child is located and desires to cooperate with the district.

(c) Nothing in this subdivision mandates the participation of a child in the status of trial discharge or supervision. Such participation is contingent upon the consent of the child.

(ii) Documentation.

(a) The requirements of the uniform case record, as established in Part 428 of this Title, will apply until the district's custody of the child has been terminated, either by court order or by the district's own action. Each reassessment and service plan review or risk assessment and service plan after the child's discharge must show whether the child remains in the custody of the local commissioner, the need for continued custody, the number and location of casework contacts with the child, the child's current living arrangements and service needs including, but not limited to whether the child has become homeless, the services provided during the past six months, including but not limited to housing and income services, and the services to be provided during the next six months. If the required number of casework contacts with the child has not been made, the case record must document that the primary reason for the failure to complete the contacts has been the child's unwillingness to cooperate with the district. The case record must also document the efforts made by the district to make contact with the child and to encourage participation in the district's supervisory functions.

(b) After termination of the district's custody of the child, whether by court order or by the district's own action, progress notes must be maintained which show the number and type of contacts with the child, the services and service providers to whom the child has been referred, and whether the child actually received services. If the required number of contacts with the child has not been made, the case record must document the efforts made by the district to contact the child and to encourage the child to cooperate with the district.

(g) Adult residential care. The following requirements shall pertain to all children in a foster care placement whose permanency goal is discharge to adult residential care.

(1) Setting of goal.

(i) Standard. Discharge to adult residential care shall be the permanency planning goal only for children for whom the necessity of placement is based in whole or in part on the reason described in section 430.10(c)(5) of this Part, as "child service need" and for whom the service needs arise out of a factor other than the child's behavior. For each child with this goal, the district shall consider alternative permanency goals, including "discharge to parents or relatives" and "discharge to adoption" before this goal is chosen, and the Director of Social Services shall review and approve the establishment of this goal.

(ii) Documentation. The assessment and service plan or risk assessment and service plan required by the uniform case record must document the specific reasons why this is the most appropriate permanency goal for this child and the reasons why the child should not be discharged to parents or relatives or to an adoptive placement.

(2) Preparation for discharge.

(i) Standard. For each individual discharged to adult residential care, the service plan for discharging the child must include the types of services and programs needed by this

individual, specific programs which could meet the individual's needs, and plans and activities to assist the child in making the transition from the present program to the new program. In the case of children in facilities operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities, the services provided in preparation for discharge by such facilities to such children shall be deemed to fulfill the requirements of this subparagraph.

(ii) Documentation. Documentation must include goals or outcomes and services in the service plan which will assist with the transition and a summary by the district of the efforts made and their results in the assessment and service plan or risk assessment and service plan required by the uniform case record. Information concerning the services which are provided to children in facilities operated or supervised by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities and which is forwarded by such facilities to the social services district responsible for maintaining the uniform case record must be included in the uniform case record and will be deemed to fulfill the documentation requirements of this subparagraph.

(h) Court orders. Notwithstanding any other provision of this section, a case shall not be subject to denial of reimbursement due to lack of diligent efforts if a court has ordered that actions be taken which prohibit compliance with the provisions of this section. The first uniform case record form required after the court order 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 district's activities do 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 diligent efforts have not been made. The district shall submit the finding of the utilization review to the court as documentation for the court review.

(i)

(1) Length of time in care. For Federal fiscal years beginning October 1, 1985 and ending September 30, 1990, the maximum number of children who are in receipt of federally reimbursable foster care maintenance payments pursuant to title IV-E of the Social Security Act and who, at any time during such years, will remain in foster care after having been in such care for 24 months shall not exceed 57 percent of the total number of children who receive such payments during such period.

(2) Social services officials shall monitor their foster care caseloads as often as is necessary to ensure compliance with the provisions of paragraph (1) of this subdivision.

Historical Note

Sec. filed Feb. 2, 1982; amds. filed: June 4, 1982; July 15, 1982; Oct. 27, 1983; Oct. 19, 1984; July 26, 1985; Oct. 17, 1985; April 24, 1986; June 4, 1986; July 18, 1986; Dec. 22, 1986; July 15, 1987; Nov. 2, 1987; Sept. 12, 1988; Oct. 11, 1988; April 24, 1989; June 29, 1993; July 20, 1993; Dec. 3, 1998 as emergency measure; March 3, 1999 as emergency measure; March 3, 1999; Aug. 1, 2000 as emergency measure; Sept. 27, 2000 as emergency measure; Oct. 30, 2000 as emergency measure, expired 90 days after filing; Dec. 26, 2000 as emergency measure; Jan. 29, 2001 as emergency measure, expired 90 days after filing; March 26, 2001 as emergency measure, expired 90 days after filing; April 30, 2001 as emergency measure, expired 90 days after filing; June 25, 2001 as emergency measure, expired 90 days after filing; July 30, 2001 as emergency measure; Aug. 10, 2001; Sept. 24, 2001 as emergency measure, expired 90 days after filing; Dec. 24, 2001 as emergency measure, expired 90 days after filing; March 25, 2002 as emergency measure, expired 90 days after filing; June 24, 2002 as emergency measure, expired 90 days after filing; Sept. 23, 2002 as emergency measure; Dec. 2, 2002 eff. Dec. 18, 2002. Amended (f)(1)(i).

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

CASE NOTES:

Where City demonstrated it performed acts mandated within time frame even though documentation of acts was incomplete or technically improper, it should not have been sanctioned under 18 NYCRR §430.12, and Department of Social Services acted arbitrarily and capriciously by imposing sanctions on City and ignoring its own interpretation of regulations regarding sanctions for documentation violators. [Sabol v. Perales, 1993, 619 N.E.2d 405, 601 N.Y.S.2d 468, 82 N.Y.2d 685](#)

18 NY ADC 430.12

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