

§ 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 six months by a caseworker employed by the authorized agency with case management and/or case planning responsibility over the child, the state in which the home is or facility is located, or a private agency under contract with either the authorized agency or other state documenting the caseworker's visit to the child's placement within the six-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 another planned living arrangement with a permanency resource; 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 another planned living arrangement with a permanency resource, 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

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§ 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 pertain to all children placed in foster care for whom a uniform case record, as described in Part 428 of this Title, is required and additionally the requirements of paragraph (c)(2) of this section pertain to all children placed by a court in the direct custody of a relative or other suitable person pursuant to article 10 of the Family Court Act. Compliance with these requirements must be documented in the form and manner required by OCFS pursuant to Part 428 of this Title 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 another planned living arrangement with a permanency resource, 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 must 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 must be made a part of the uniform case record. It is 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 is 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-State or out-of-state in a timely and orderly 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 review of each comprehensive family assessment and service plan, each family reassessment and service plan and each child assessment and service plan, if the child is completely legally freed for adoption, as required under section 428.6 of this Title. The panel must include the case planner or the child's caseworker and an administrator or other person not responsible for the case management or delivery of services to that case, nor in the direct line of supervision for 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 progress made through implementation of the previous service plan, identify issues of concern and suggest modifications that impact on and inform the development of a new service plan for the case. A written statement of the conclusions

and recommendations must be developed by the panel, and such report must identify barriers to permanency and any other issues that must be addressed in the new service plan. The service plan review must be held no earlier than 60 days, but no later than 90 days from the date the child was removed from his or her home, or where the child is placed in foster care pursuant to article 3 or 7 of the Family Court Act, no earlier 60 days, but no later than 90 days from the date the child was placed in foster care. Subsequent service plan reviews must be held every six months thereafter. A permanency hearing satisfies the requirements for a service plan review if such permanency hearing is held and completed within six months of the previous service plan review.

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

(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), unless their rights to the child have been terminated, guardian(s), or, in the case of a child whose permanency planning goal is other than discharge to a parent, the person 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;

(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;

(5) for a child with a permanency planning goal of another planned living arrangement with a permanency resource, any person identified as the permanency resource;

(6) the case manager, case planner's supervisor, and child protective services monitor, if applicable;

(7) key providers of service to the child and family;

(8) the child's law guardian; and

(9) any other person the child's parent(s) identifies.

(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 service plan review inviting them to attend, giving the date, time and location of the service plan review and in the case of the parent(s), 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 service plan review no later than 30 days after the date the service plan review 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 service plan review must be given a summary of the service plan for the child and family which at a minimum must include the following:

(i) new or continued goals or outcomes and anticipated completion dates when goals are to be achieved;

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

(3) For a child in foster care or a child placed by a court in the direct custody of a relative or other suitable person pursuant to article 10 of the Family Court Act, 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 family assessment and service plan or child assessment and service plan if the child is completely legally freed for adoption 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 service plan review and the date of the review. 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 review the efforts made to involve them in the review 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) *Another planned living arrangement with a permanency resource.* Another planned living arrangement with a permanency resource is a permanency planning goal to assist foster care youth in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services. An adult permanency resource is a caring com-

mitted adult who has been determined by a social services district to be an appropriate and acceptable resource for a youth and is committed to providing emotional support, advice and guidance to the youth and to assist the youth as the youth makes the transition from foster care to responsible adulthood. The following requirements pertain to all children in a foster care placement whose permanency goal is discharge to another planned living arrangement with a permanency resource and, where indicated, to children deemed to be discharged to another planned living arrangement with a permanency resource or deemed to have a goal of discharge to another planned living arrangement with a permanency resource. For the purposes of this subdivision only, *a child deemed to be discharged to another planned living arrangement with a permanency resource* 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 another planned living arrangement with a permanency resource* 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 another planned living arrangement with a permanency resource 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 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 and document a compelling reason why 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.

(2) Preparation for discharge. (i) Standard.

(a) The district must ensure the provision to all children with a goal of discharge to another planned living arrangement with a permanency resource, or deemed to have a goal of discharge to another planned living arrangement with a permanency resource, 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 another planned living arrangement with a permanency resource 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 another planned living arrangement with a permanency resource, 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 another planned living arrangement with a permanency resource 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:

<i>Age</i>	<i>Monthly stipend</i>
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 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, reassessment and service plan review 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 another planned living arrangement with a permanency resource, the district must identify any persons, services or agencies which would help the child maintain and support himself or herself 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 another planned living arrangement with a permanency resource, 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 another planned living arrangement with a permanency resource 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 another planned living arrangement with a permanency resource, 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 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 another planned living arrangement with a permanency resource and every child deemed to have been discharged to another planned living arrangement with a permanency resource 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 another planned living arrangement with a permanency resource or is deemed to have been discharged to another planned living arrangement with a permanency resource 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 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; Dec. 29, 2005 as emergency measure; March 29, 2006 as emergency measure; June 27, 2006 as emergency measure; Sept. 25, 2006 as emergency measure; Sept. 29, 2006 as emergency measure; Dec. 5, 2006; Dec. 28, 2006 as emergency measure; March 28, 2007 as emergency measure; June 26, 2007 as emergency measure; Sept. 24, 2007 as emergency measure eff. Sept. 24, 2007; Sept. 24, 2007 eff. Oct. 10, 2007. Amended (c)(1)(ii)(f).