



New York State Defenders Association, Inc.

Public Defense Backup Center

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September 24, 2020

Commissioner Sheila J. Poole
Office of Children and Family Services
Capital View Office Park
52 Washington Street
Rensselaer, NY 12114-2834

RE: Need for OCFS Guidance on ASFA Requirements During COVID-19 Crisis

Dear Commissioner Poole:

Last month, a coalition of parents and advocates sent the attached letter to your office, requesting that “OCFS issue clear and specific guidance to foster care agencies on how to alter their approaches to reunification efforts and the timelines set out in the Adoption and Safe Families Act (ASFA) and New York’s Social Services Law during the current state of emergency and its aftermath.” They urged you to adopt these standards in accordance with the June 23, 2020 guidance issued by Associate Commissioner Jerry Milner of the Children’s Bureau, U.S. Department of Health & Human Services. The New York State Defenders Association (NYSDA) fully supports their request and the adoption of these guidelines, and urges you to meet with the coalition members and NYSDA as soon as possible to discuss this matter.

NYSDA is a not-for profit membership association made up of more than 1,600 public defenders, legal aid attorneys, assigned counsel, and individuals dedicated to the right to counsel for criminal defendants and family court litigants who are constitutionally and statutorily entitled to legal representation. With funds provided by the State of New York, NYSDA operates the Public Defense Backup Center (the Backup Center), which offers legal consultation, research, training, and other assistance to the approximately 6,000 attorneys who provide public defense representation across the state.

At the onset of the COVID-19 pandemic, NYSDA received regular reports of local agencies and individual caseworkers denying parenting time or offering limited virtual visits to parents whose children were in placement. Some attorneys reported that no visits, in-person or virtual, were being allowed. Others reported seemingly arbitrary decisions regarding visitation. Because access to the courts was limited to emergency cases, parents had no recourse when those agencies summarily revoked or reduced their court-ordered parenting time. As a result, some parents went months without seeing their children at all. In areas where Internet access is available and reliable, parents who were lucky enough to be able to afford or borrow the necessary technology for virtual visits, were able to see their children on a limited basis, assuming the foster family and agency were cooperative. However, as noted in the attached letter, “[t]hough necessary in some cases, virtual ‘visits’ are poor substitutes for in-person visitation.”

While the pandemic seems to have stabilized and most parents are receiving visitation and services again, parents are left with significant uncertainty and fear about their family's future. Will visitation be suspended again if/when a "second wave" hits? Will their parental rights be terminated because ordered services were not available during the pandemic? It is imperative that families not be denied precious parenting time, that parents not be denied needed services to reunify families, and that parental rights not be terminated due to a pandemic that is beyond their control. Statewide guidance regarding termination of parental rights and access to visitation and other services can help to provide certainty to both child welfare agencies and families.

In his June 23, 2020 letter, Jerry Milner states that "statutory exceptions exist to ensure that an agency only files a petition to terminate parental rights when a parent has had access to the necessary services that can lead to a meaningful opportunity to reunify with his or her children." A TPR petition is not required if "the agency is required to make reasonable efforts to reunify the family, but has not provided the family the services necessary for the safe return of the child" or when "the agency has documented a compelling reason that filing a TPR petition is not in the child's best interests." Milner further stated: "In light of the devastating impact that the COVID-19 pandemic has had on child welfare systems and applicable exceptions to the 15/22 requirement, I cannot emphasize how strongly I urge agencies to carefully consider whether it is appropriate to terminate a parent's rights pursuant to the 15/22 requirement."

For the foregoing reasons, we urge you to adopt statewide guidelines that all local social services agencies must follow to ensure fairness and equity during these unprecedented times. NYSDA welcomes the opportunity to meet with you to discuss this important and time-sensitive matter.

Sincerely,

A handwritten signature in blue ink that reads "Susan C. Bryant".

Susan C. Bryant
Executive Director

A handwritten signature in black ink that reads "Kimberly Bode".

Kimberly Bode
Family Court Staff Attorney

cc: Deputy Commissioner Suzanne E. Miles-Gustave