

NEW YORK STATE  
 DEPARTMENT OF SOCIAL SERVICES  
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES  
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

**ADMINISTRATIVE DIRECTIVE**

TRANSMITTAL NO.: 85 ADM-43  
 [Family & Children Services]

TO: Commissioners of Local Social Services  
 Directors of Authorized Agencies

SUBJECT: Adoption -  
 Separated Spouses who may Adopt

DATE: September 3, 1985

SUGGESTED DISTRIBUTION:  
 Directors of Social Services  
 Child Welfare Staff  
 Adoption Staff  
 Adoption Agencies

CONTACT PERSON:

Any questions relating to the information contained in this release should be addressed to Marilyn Dickenson, Division of Family and Children Services, 40 North Pearl Street, Albany, New York 12243, telephone 1-800-342-3715, extension 4-9579.

I. Purpose

The purpose of this release is to advise local social services officials and authorized agency staff of the provisions of Chapters 218 and 745 of the Laws of 1984 and the regulations which implement these laws. These laws permit legally separated spouses to adopt a child. Copies of Chapters 218 and 745 of the Laws of 1984 and the implementing regulations are attached for your information.

II. Background

Prior to the enactment of Chapters 218 and 745, Section 110 of the Domestic Relations Law and Section 383.3 of the Social Services Law prohibited married but separated spouses from adopting a child unless the child was adopted by both spouses. An adoption application which was submitted to an authorized agency by only

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
82 ADM-50		18 NYCRR Part 421	SSL 101.1 383.4 DRL 110 Chaps. 745, 218 of the Laws of 1984		

DSS-296 (8/82)

one of the separated spouses could not be processed. These laws applied to a foster parent who wanted to adopt his or her foster child as well as to other prospective adoptive applicants.

### III. Program Implications

Chapters 218 and 745 of the Laws of 1984 and regulations implementing these laws allow a married adult, who is legally separated from his or her spouse, under a legally recognizable separation agreement or decree to apply to adopt a child. Adoption applications from such persons must receive the same consideration and preference as is given to other adoption applications.

In adoptions involving separated spouses, the non-adopting spouse is relieved from liability for the support of the adopted child when the adoption occurs after the legal separation and for as long as the spouses remain separate and apart after the adoption. Further, the adopted child is not considered the child or step-child of the non-adopting spouse for inheritance purposes.

In the event that the spouses are reunited prior to the adoptive placement of a child and both spouses wish to adopt, the application to adopt must be signed by the returning spouse, the home study updated to include the returning spouse and an inquiry made of the State Central Register on the returning spouse.

Should the reunion take place after the placement of a child but prior to the finalization of the adoption, the returning spouse must participate in the adoption application process. Married persons can only adopt separately when they are living apart pursuant to separation decree or legal agreement. The application should therefore be signed by the returning spouse, the home study updated to include the returning spouse and an inquiry made of the State Central Register on the returning spouse. The placement agreement and subsidy agreement, if applicable, must also be signed by the returning spouse.

Should the reunion take place after the finalization of the adoption, the returning spouse is not required to adopt the child. However Social Services Law Section 101.1 would require the the returning spouse to support the child.

When the return of the spouse takes place after the child is placed, supervision or post adoptive services should be generously provided. Particular attention should be paid to the areas of stress in the marital relationship in the past and the reasons that led to the separation. The reunited couple should be encouraged to become involved in marriage and family counseling, to ensure the future stability of the marital relationship and the family unit.

The stabilization of the family unit is extremely important in ensuring the success of the placement, but the primary concern is the best interests of the child. Therefore the impact of a reconciliation on the child should be assessed. An older child should be asked about the family relationship and the impact of the reunion on the environment in the home. In the case of younger children who are unable to clearly verbalize, an assessment of the family unit and the home environment should be made and a determination made as to whether it will be in the interests of the child to remain in the home. No effort should be spared in making the adjustment to a two parent household proceed smoothly for the child(ren).

While the impetus of the change in the law was to facilitate the adoption of foster children by foster parents who were separated, the law and the regulations permit all legally separated spouses to adopt. Even in the case of separated foster parents applying to adopt, it is important during the home study to assess the reasons for the separation and the likelihood of a reconciliation. Clearly, in cases where reconciliation is imminent, expected, planned for or sought by a spouse, it may be advisable to delay making an adoptive placement until the marital relationship stabilizes. Further, the impact of a reconciliation on a child before or after finalization of the adoption should be discussed with separated persons who are interested in adopting. The prospective adoptive parent should be fully aware of the possible effect a reconciliation could have on adopted children and should be able to prepare a child for such a possibility.

#### IV. Required Actions

Local social services districts and authorized agencies shall review their policies, practices and procedures to ensure:

- (1) that married persons living apart from their spouses pursuant to a legally recognizable separation agreement or decree of separation, are permitted to apply to adopt a child;
- (2) that applications for adoption are accepted from married persons living apart pursuant to a legally recognizable separation agreement or a decree of separation;
- (3) that proof of the separation agreement or decree is furnished during the adoption study process; and
- (4) that no policies are established to place married applicants who are living apart pursuant to a separation agreement or a decree of separation at a disadvantage in the adoption process.

V. Effective Date

This release is effective as of June 19th, 1984, the effective date of Chapter 218 of the Laws of 1984. However the material in this release concerning the support of an adopted child by a spouse who returns to the household only applies after December 1st, 1984, the effective date of Chapter 745 of the Laws of 1984.

  
Joseph Semidei  
Deputy Commissioner  
Division of Family  
and Children Services

Attachment

CHAPTER 218

AN ACT to amend the domestic relations law, in relation to persons who may adopt

Became a law June 19, 1984, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section one hundred ten of the domestic relations law, as amended by chapter one hundred forty-seven of the laws of nineteen hundred sixty-one, the last unnumbered paragraph as amended by chapter five hundred seventy of the laws of nineteen hundred seventy, is amended to read as follows:

§ 110. Who may adopt; effect of article. An adult unmarried person or an adult husband and his adult wife together may adopt another person. *An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded may adopt another person; provided, however, that the person so adopted shall not be deemed the child or step-child of the non-adopting spouse for the purposes of inheritance or support rights or obligations or for any other purposes.* An adult or minor husband and his adult or minor wife together may adopt a child of either of them born in or out of wedlock and an adult or minor husband or an adult or minor wife may adopt such a child of the other spouse. No person shall hereafter be adopted except in pursuance of this article, and in conformity with section three hundred seventy-three of the social [welfare] services law.

Adoption is the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person.

A proceeding conducted in pursuance of this article shall constitute a judicial proceeding. An order of adoption or abrogation made therein by a surrogate or by a judge shall have the force and effect of and shall be entitled to all the presumptions attaching to a judgment rendered by a court of general jurisdiction in a common law action.

No adoption heretofore lawfully made shall be abrogated by the enactment of this article. All such adoptions shall have the effect of lawful adoptions hereunder.

Nothing in this article in regard to a minor adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred seventy-three, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust a minor adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created. Nothing in this article in regard to an adult

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before April twenty-second, nineteen hundred fifteen, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created.

§ 2. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss: (JURAT PLACEHOLDER)

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction, and, in accordance with such section is entitled to be read into evidence.

WARREN M. ANDERSON

*Temporary President of the Senate*

STANLEY FINK

*Speaker of the Assembly*

Filed April 16, 1985

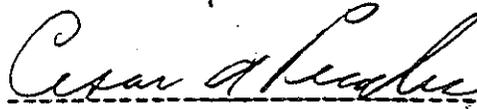
STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d) and 34(3)(f) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby amend subdivision (a) of Section 421.1, and paragraph (1) of subdivision (g) of Section 421.11, renumber paragraphs (4), (5) and (6) of subdivision (c) of Section 421.15 as paragraphs (5), (6) and (7) and add a new paragraph (4) to such subdivision and amend subdivision (d) of Section 421.16 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Dated: April 11, 1985

Signed:



Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on April 11, 1985 amending subdivision (a) of Section 421.1, and paragraph (1) of subdivision (g) of Section 421.11, renumbering paragraphs (4), (5) and (6) of subdivision (c) of Section 421.15 as paragraphs (5), (6) and (7) and adding a new paragraph (4) to such subdivision and amending subdivision (d) of Section 421.16 of the Official Regulations of the State

Department of Social Services, being  
Title 18 NYCRR, the express terms of  
which were published in the New York  
State Register on February 13, 1985.

Dated: April 11, 1985

Signed:   
Commissioner

Subdivision (a) of section 421.1 is amended to read as follows:

Adoptive applicants means [ a person ] an individual, a married person living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or a decree of separation or a married couple who has applied to adopt or who has received agency approval for the placement of a child in his or her home for the purpose of adoption.

Paragraph (1) of subdivision (g) of section 421.11 is amended to read as follows:

(1) that married persons [ , including those separated or living apart, ] can adopt only as a couple with each partner participating and that a married person who is living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or decree of separation may also adopt a child;

Paragraphs (4), (5) and (6) of subdivision (c) of section 421.15 are renumbered paragraphs (5), (6) and (7) and a new paragraph (4) is added to read as follows:

(4) if married and living separate and apart from their spouse, proof that the separation is based upon a legally recognizable separation agreement or decree of separation;

Subdivision (d) of section 421.16 is amended to read as follows:

(d) Marital status. Agencies shall not consider marital status in their acceptance or rejection of applicants. However, one married partner may not adopt without the other unless one partner is

living separate and apart from his or her spouse pursuant to a legally recognizable separation agreement or decree of separation. Agencies shall not establish policies which place single [ , ] or divorced applicants, applicants who are separated from their spouses pursuant to a legally recognizable separation agreement or decree of separation or widowed applicants at a disadvantage.

(Deleted material [brackets] ; new material underlined)