

Legal Updates for CPS and Child Welfare 2008

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Handout Materials



**New York State
Office of
Children & Family
Services**

New York State
Office of Children and Family Services
and
SUNY Distance Learning Project

LEGAL UPDATES FOR CPS AND CHILD WELFARE 2008

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TELECONFERENCE - Selected Child Welfare Case Law

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REMOVALS and GENERAL ABUSE and NEGLECT ISSUES

Matter of Joseph S. 43 AD3d 408, 840 NYS 2d 624 (2nd Dept. 2007)

The Second Department affirmed Suffolk County's FCA 1027 order that the child be placed in foster care temporarily and that the mother only have supervised visitation. The child's forehead had been injured and the mother had a history of excessive corporal punishment. The mother also did not protect the child from the father. Suffolk County DSS had made reasonable efforts to prevent removal and continuation in the mother's care would be contrary to the child's best interests. Removal was necessary to avoid imminent risk to the child.

Matter of ACS v Silvia S. 18 Misc3d 326, 2007 NY Misc LEXIS 7501 (Family Court, Queens County 2007)

Queens County Family Court refused to grant ACS' motion under CPLR 3102 c for a mother's psychological, psychiatric and medical records to be produced in order to facilitate an investigation of alleged neglect. Since the agency had not determined if the parent had in fact neglected the child, they are not entitled to the records. In addition HIPAA would also not permit a court to order records to be produced in this situation as the need to determine the child neglect concern does not outweigh the mother's right to privacy.

Matter of Andrew B.L. 43 AD3d 1046, 844 NYS2d 337 (2nd Dept. 2007)

The Second Department was critical about how Suffolk County Family Court handled a child's in camera interview in a neglect matter and remanded the matter for a new fact finding. The 14 year old was interviewed in chambers but was not sworn. The court did not first consider if the child needed to testify in chambers or if the mother's attorney could be present or if the child was unable to take an oath. This was not remedied by the court asking the child weeks later in open court if she would swear to the truth of the statements she had made when she had been in chambers. The Appellate Court also dismissed the derivative neglect allegations regarding the other children as the mother had not used corporal punishment against them.

Matter of Anne PC v Steven P 17 Misc3d 1107(A), 2007 WL 2871012 (Family Court, Monroe County 2007)

In a private custody case, Monroe County Family Court held that it did not have authority to order DHS to file an Art. 10 proceeding. The court had ordered several 1034 investigations due to the allegations in the custody case but the agency did not file an Art. 10 petition deeming preventative services all that was necessary. The Law Guardian moved to have DHS ordered to file a petition and at the court's query, declined any order that she file as is permitted in FCA 1032. The court found that there was no statute and no case law in the Fourth Department that gave Family Court authority to order the DHS to file an Art. 10 petition.

In Re Anjanne J., 44 AD3d 407, 843 NYS2d 248 (1st Dept. 2007)

The First Department reversed New York County Family Court. The respondent was not a person legally responsible for the target child and therefore could not be found to have abused the target child. Therefore the derivative finding regarding the half sister of the target child must be reversed.

Matter of Raymond D., 45 AD3d 1415, 845 NYS2d 583 (4th Dept. 2007)

Although affirming the Monroe County Family Court's excessive corporal punishment neglect and derivative neglect finding, the Fourth Department found that Family Court had erred in drawing a negative inference from the mother's failure to appear on several of the days of the hearing. A negative inference is to be drawn where the respondent does not testify and the mother here did testify on her own behalf. However, the proof still established that her corporal punishment of her son was excessive and created an imminent danger and as this is so closely connected to her abilities to care for her other child, that the other child is derivately neglected.

Matter of Fantasia Y., 45 AD3d 1215, 846 NYS2d 474 (3rd Dept. 2007)

A Clinton County father attempted to appeal his consent to a neglect finding and the Third Department dismissed as no appeal can be brought on a consent. The father argued that the consent was not knowing or voluntary but such an argument must be made via motion to the trial court. In any event, prior to accepting the consent, the court engaged in a thorough colloquy with the father that demonstrated that he understood what he was doing, the legal consequences of the consent and that the voluntarily was doing so.

Matter of Marvin Q., 45 AD3d 852, 846 NYS2d 356 (2nd Dept. 2007)

The respondent's attorney in a Nassau County Family Court matter was properly disqualified to represent the respondent upon the Law Guardians' motion. The respondent's lawyer arranged for the subject child to be interviewed by another attorney in his firm who took an affidavit from the child. This interview was done without the Law Guardian's knowledge or consent. The law guardian and the child have an attorney-

client relationship and this behavior denied the child his due process rights. Clearly disqualification was warranted and the court properly also refused to allow the affidavit to be admitted into evidence.

Matter of Nicole KK. 46 AD3d 569, 848 NYS2d 442 (3rd Dept. 2007)

A Delaware County mother admitted to neglect and consented to a disposition that placed the child in foster care. Two weeks later, she moved to vacate the order alleging that the agency caseworker had fraudulently induced her consent by promising more visitation and a quicker reunification if she consented. Delaware Family Court denied the motion and the mother appealed. The Third Department affirmed finding that the mother's allocution on the record did not support that any such promises or inducements had been made and further that the mother did clearly admit the neglect and she did not deny the neglect even in her motion to vacate.

Matter of Ahmad H. 46 AD3d 1357, 849 NYS2d 140 (4th Dept. 2007)

The Fourth Department found a derivative neglect adjudication was appropriate regarding two children even though the original finding on which it was based was from 1989. Although 17 years had passed since the Onondaga County father had been found to have neglected other children in his care, this original finding had been based on sexual abuse of those children. There is no indication that the father's "proclivity for sexually abusing children" has changed. The father is a convicted sex offender and has never been in a treatment program despite much advice that he gets treatment. He is on probation with a condition that he have no contact with children under 18 years of age and there is an order of protection that he stay away from another child that is in the custody of the respondent mother. This man has a fundamental defect in his understanding of parenthood and even 17 years between the Art. 10 petitions is not too remote in time.

Matter of Xavier J. 47 AD3d 815, 849 NYS2d 648 (2nd Dept. 2008)

The Second Department reversed a Kings County Family Court order in a §1027 hearing to return a newborn child to its mother. The mother had pleaded guilty to manslaughter in connection with the death of her infant in December of 2001. The mother did not acknowledge that her shaking of that infant was the cause of the child's death. She also failed to comprehend the serious risk that the subject child's father posed due to his drug use and violent behavior. The safer course is not to return the child while the matter is pending.

Domestic Violence and Neglect

Matter of Angelique L. 42 AD3d 569, 840 NYS2d 811 (2nd Dept. 2007)

Suffolk County Family Court’s finding of neglect against a mother was upheld by the Second Department. The children had lots of problems – one had been sexually abused and one had recently been hospitalized for mental problems. The children had been previously removed on two prior occasions and had just been returned home from foster care three weeks earlier when the caseworker made an unannounced home visit. The caseworker found the children crying and upset as they had witnessed the mother’s boyfriend hitting the mother. There had been a history of domestic violence. The boyfriend had threatened also beat one child “black and blue and kill him”. The child asked the caseworker to be placed back into foster care and the child also threatened to kill the boyfriend. The other child was in her room crying “hysterically”. The mother neglected these children by minimizing the incident of domestic violence between her and her boyfriend. She did not want her boyfriend to leave the home, did not want to press charges against him and was unaware of the impact that the violence had on the children. Citing **Nicholson v Scoppetta, 3 NY3d 357 (2004)**, the court found that the mother was not acting as a reasonable and prudent parent and was not protecting her children from the effects of domestic violence.

Matter of Andrew S. 43 AD3d 1170, 842 NYS2d 579 (2nd Dept. 2007)

The Second Department reversed a Suffolk County dismissal of a neglect petition against a father. The mother testified that the children were present when the parents had a verbal dispute and the father threw a computer out of a second story window. The computer landed 12 to 15 feet away from where the mother and the children were in the car. The father also tried to hang himself with a sheet from the stair banister while the children were in the home and the children were observed by the police to be “very upset”. The oldest child described seeing blood and his father being taken away in an ambulance to the caseworker. These actions constituted neglect.

Matter of Casey N. 44 AD3d 861, 844 NYS2d 92 (2nd Dept. 2007)

An Orange County mother resolved an Article 10 petition with an ACD with an admission. She admitted on the record that there had been “incidents of domestic violence” in the home in front of the children and everyone consented to an ACD. Then, after a violation was brought and proven, the court made a finding of neglect based on the prior admission. On appeal, The Second Department reversed and remanded, finding that the admission was not an admission to facts that constituted neglect. There was no admission as to the nature or the extent of the violence and the actual or imminent impairment to the children. The matter was returned for a new fact finding on the question of the incidents impact on the children, if any.

DERIVATIVE ISSUES

Matter of Vivian OO., 44 AD3d 1104, 844 NYS2d 143 (3rd Dept. 2007)

A Tompkins County father had three children. The first child had been freed for adoption and the termination regarding that child had already been affirmed on appeal. The DSS

filed a sexual abuse petition regarding the second child and derivative neglect of the third child. The father appealed those findings but while the appeal was pending, his parental rights to the second child were terminated. So his appeal of the earlier abuse finding as to her is moot. As to the derivative finding on the third child, who has not been freed for adoption, it is affirmed based on the abuse of the second child and the subsequent termination of his rights to that child given his failure to resolve his problems.

Matter of Jewle I., 44 AD3d 1105, 844 NYS2d 145 (3rd Dept. 2007)

The Third Department agreed with Tompkins County Family Court that the respondents' two children were derivatively neglected where the respondent smoked marijuana and drank in front of a 16 year old friend of the children who lived in the house for a month. The lower court found that he had sexually abused the visiting child and that this revealed fundamental flaws in his parental judgment such that his own children were derivatively neglected. He exposed his penis to this visiting teen and fondled her. On one occasion he fondled the visiting child while one of his own children was in the home and then paid his child to go to the store apparently to be alone with the target child. He then performed oral sex on the child. The father strongly denied the allegations and the two children that testified were cross-examined such that the lower court had a difficult credibility decision. Although the allegations of the oral sex were added to the petition in an amendment, this was proper as the respondent had several months notice of these allegations which had surfaced at the 1028 hearing.

Matter of Kathya V., 16 Misc3d 1132A, 2007 NY Misc LEXIS 6136 (Family Court, Queens County 2007)

A Queens County father was found to have derivatively abused and neglected his three children upon a summary judgment motion based on his criminal conviction for raping his two foster children.

Matter of Sephaniah A., 45 AD3d 386, 845 NYS2d 301 (1st Dept. 2007)

The First Department affirmed New York County Family Court's derivative abuse finding regarding a newborn as well as his placement in foster care. The mother had been found to have abused her other children two years earlier. The older children had been burned and had unexplained injuries and these were serious incidents. At the time of the prior incidents, the mother lied about the circumstances and did not bring one of the children for medical treatment. Generally claiming to take responsibility for the past events at this date is not sufficient to resolve the issues. The mother's judgment continues to be impaired.

Matter of Vincent L., 46 AD3d 395, 848 NYS2d 622 (1st Dept. 2007)

A New York County father derivatively abused and neglected his children based on his admitted sexual abuse of four other children between 1996 and 1999 with whom he had a paternal relationship. Also the father, while armed with a knife, threatened to kill

himself, the mother and the 3 children. He assaulted the mother in open court and took one child from the mother into another borough. The lower court properly denied the father visitation given the children's ages, his incarceration a distance away, his repeated threats of violence and erratic behavior and his failure to engage in services.

Matter of Suzanne R., __AD3d__, dec'd 2/21/08 (3rd Dept. 2008)

A Clinton County Family Court was affirmed by the Third Department for finding a newborn to be derivately and directly neglected. In 2003, the mother had been found to have neglected her two older children and they were placed with a relative. Although she did attend counseling she still had no acknowledged the problems that had resulted in the older children's removal. She gave birth to a new child in 2005. She knew that her paramour had been found over the years to have abused or neglected each of his own four children and that all four of them had been freed for adoption. She planned to have the infant reside with her and her paramour and refused DSS help to make alternative plans for the infant.

GENERAL NEGLECT

Matter of Angelina W., 43 AD3d 1370, 842 NYS2d 828 (4th Dept. 2007)

An Erie County neglect finding against a mother was affirmed by the Fourth Department. The mother and father were both found to have neglected the child. The father was ordered to remain away from the home and the children by the criminal court after a conviction for punching his 8 year old daughter in the face near the eye. The mother allowed the father back into the home, knowing that he was physically abusive and knowing that there was an order of protection forbidding contact. The father was in the home and had contact with the children over a period of at least two days.

Matter of John O., 42 AD3d 687, 839 NYS2d 605 (3rd Dept. 2007)

Citing **Nicholson v Scopetta 3 NY3d 357 (2004)**, the Third Department reversed a Rensselaer County Family Court finding of neglect against a mother. The Appellate Court found that there was no proof that the 14 year old target child was in fact emotionally harmed by the incidents alleged. The mother did strike the child with a wax candle when they were arguing but this only resulted in a slight bruise on the thumb that required no medical attention. While such behavior is not appropriate, it does not rise to neglect. The mother also called the child a vulgar name but this occurred when the mother learned that the court had given temporary custody of the child to a cousin and although the child was upset for about an hour after this; her emotional condition was not due solely to the name calling. The mother also attempted to abandon the child at a police station during another argument but again there was no proof that this resulted in emotional harm to the child. There was also evidence that the mother went out at night and stayed out all night on at least one occasion, there was no evidence that this 14 year old was alone when this occurred. She was with her 15 year old brother and the

children's grandmother lived in an apartment upstairs. The 14 year old regularly babysat alone for younger children. There is no evidence that any of these incidents resulted in emotional harm to the child and although the child clearly had "defiant and confrontational behaviors", there was no proof, as required by **Nicholson**, that her behavior was attributable to the mother's actions.

Matter of Keira O. 44 AD3d 668, 844 NYS2d 344 (2nd Dept. 2007)

The Second Department reversed a Queens Family Court's dismissal of a neglect petition regarding a newborn child for failure to state a cause of action. The mother had used heroin in her last trimester of pregnancy and had been using heroin since she was 14 years old. She tested positive for cocaine and opiates in her final two months of pregnancy. The mother had been found to have neglected her older child 9 months earlier and there was a pending termination petition. The mother was enrolled in a treatment program but whether she was "voluntarily and regularly participating" in this program such that FCA 1046 exception applied should not be invoked without a fact finding hearing.

Matter of Christian F. 42 AD3d 716, 838 NYS2d 451 (3rd Dept. 2007)

The Third Department affirmed Tompkins County Family Court's dismissal of neglect proceedings against a grandmother and her boyfriend. The boyfriend was a convicted sex offender and the grandmother knew of the conviction. She had custody of her young granddaughter. The petition against the boyfriend was appropriately dismissed as he had never been legally responsible for the child. It was also appropriate to dismiss the petition against the grandmother as she kept the boyfriend away from the child and in fact terminated her relationship with the boyfriend. (Note: the child was in the home for 15 months before she terminated the relationship) While exposure of a child to a known sex offender can constitute neglect, the grandmother's testimony that she did not allow contact between the boyfriend and the child was believed by the lower court.

Matter of Lester M. 44 AD3d 944, 944 NYS 2d 123 (2nd Dept. 2007)

A two year old child was burned accidentally as he jumped from bed to bed while his mother sat on one bed using a hot curling iron. The Second Department agreed that this Richmond County mother neglected her child who sustained first and second degree burns and she did not take him for medical treatment. The danger of using a hot curling iron while a 2 year old is jumping nearby is apparent. The child had just been returned to the mother's care three weeks earlier after having been placed in foster care at 18 months of age. In that incident the child had received second and third degree burns over 30% of his body when he was left unattended in a sink of scalding water. That incident had resulted in a finding of severe abuse against the mother's boyfriend although the prior petition had been dismissed as against the mother. Under these circumstances the mother should have been even more aware of the dangers of a potential burn and should also have known to take the child for medical attention.

Matter of Bailee M.B. 44 AD3d 1049, 844 NYS2d 412 (2nd Dept. 2007)

An Orange County mother neglected her children when she left them alone in an unsafe and dirty motel room where she had left prescription medication and a steak knife. The oldest child, was 14, but had substance abuse and mental illnesses, was incapable of supervising the 6 younger children.

Matter of Alexander D. 45 AD3d 264, 845 NYS2d 244 (1st Dept. 2007)

A New York County Family Court neglect finding was reversed by the First Department. The First Department disagreed that the child having missed multiple days of school constituted educational neglect. The 10 year old child is autistic and mentally retarded and had to take a lengthy bus ride from Manhattan to Brooklyn. It was a significant problem to get the child to get on the bus every day. The parents were trying to secure an appropriate school setting for the child and the missed days of school were not shown to have affected his education. The child was not medically neglected even though he had fallen down the stairs and the parents had not sought medical help. There was no evidence that the child had suffered anything more than a few minor marks. The mother had exaggerated the child's injuries to the teacher to justify the child not going to school as she did not want to admit that the child had had a tantrum and would not get on the bus again. Since the parents did not neglect the target child, the adjudication of derivative neglect as to the child's brother also has to be reversed.

Matter of Krista LL. 46 AD3d 1209, 849 NYS2d 398 (3rd Dept. 2007)

The Third Department agreed with Columbia County Family court that a mother had neglected her two children based on her response to her oldest child when the child disclosed that the stepfather was sexually abusing her. When the older girl told her mother of the sexual abuse, the mother's initial response was appropriate. She took the child to counseling and called the state police. Thereafter her conduct was neglectful. She refused to believe that the sexual abuse occurred even when her husband confessed that he had done it. She repeatedly accused the child of lying and breaking up the family. She used excessive corporal punishment on the girl when the girl refused to recant. The mother convinced the younger child that her older sister was lying. After the stepfather was released from jail, the mother had the older child go live with friends and then permitted the father to return to the home where he was in contact with the younger child. This mother failed to provide any assistance to her daughters over this obvious emotional issue. The mother placed the two girls in imminent risk.

Matter of Jessica P. 46 AD3d 1142, 848 NYS2d 412 (3rd Dept. 2007)

A Columbia County mother neglected her three children by living with her mother and her mother's boyfriend when she had reason to be suspicious of the boyfriend's potential for sexual abuse. After the mother had left the grandmother's home, her oldest daughter revealed that the grandmother's boyfriend had been sexually abusing her for a long time.

Both the mother and the grandmother were found to have neglected the children and the mother only appealed. The mother knew that another family member had accused the boyfriend of raping her when she was 17 years old. The mother also had been subjected to unwanted sexual advances by the boyfriend and admitted to being scared to be alone with him. "Most notably", on at least two occasions while living in the home with the boyfriend, the mother asked her daughter if "anything bad" was happening with the boyfriend. Given these concerns, it was neglect to continue to live in the home with the boyfriend, to allow him to be alone with the child and to allow him to bathe the child. The mother claimed that the out of court statements of the child were not corroborated. However, the mother was not charged with sexual abuse, only neglect, and she in fact conceded that the child had been sexually abused. The mother's neglect is based on her failure to take action to protect the child based on her own fears and suspicions about the boyfriend and therefore corroboration of the undisputed sexual acts are not required.

PHYSICAL ABUSE

Matter of Sidney FF. 44 AD3d 1121, 844 NYS2d 453 (3rd Dept. 2007)

An Ulster County father's three month old child had rib and skull fractures in different stages of healing and the medical experts testified that the injuries could not have occurred accidentally. The Third Department concurred that the father did not rebut the presumption of abuse. He also derivatively neglected his other 2 older children. The medical proof indicated that the child was injured on at least 3 occasions and that only a violent and abusive event could have caused the injury. The court discredited the father's attempt to explain the child's injury and took judicial notice that there had been a prior proceeding regarding his other child who had been abused when she was four months old at the time. She had suffered multiple fractures and bruising.

Matter of Kevin G. 16 Misc3d 1119A, 2007 NY Misc LEXIS 5358 (Family Court, Queens County 2007)

Queens County Family Court granted a summary judgment motion finding a father to have severely abused his 6 month old based on his conviction for second degree assault. The criminal court had ordered the father to stay away from the child for nine years and Family Court found that any diligent efforts toward reunification would be detrimental to the child. The mother also was severely abusive to the child given her guilty plea to first degree reckless endangerment. She recklessly behavior evinced a depraved indifference to the child's life and the child suffered a serious physical injury. The mother continues to deny her role in the abuse and diligent efforts to reunify are highly unlikely to be successful and may be detrimental.

Matter of Damien S. 45 AD3d 1384, 844 NYS2d 790 (4th Dept. 2007)

Erie County Family Court found that a father abused his child who had shaken baby syndrome. The Fourth Department affirmed. The child suffered an injury that would ordinarily not occur without abuse and the father was the caretaker at the time. The father did attempt to rebut the prima facie case by arguing that there were other people in the home at the time the injury occurred but the court found that there was credible evidence that none of those people were responsible for the injuries.

Matter of Christopher Anthony M., 46 AD3d 896, 848 NYS2d 711 (2nd Dept. 2007)

The Second Department reversed the Queens County Family Court's and granted summary judgment for the father in an abuse case. The 18 month old child was brought to the hospital for serious burns on his head and face. The mother had been out of the home at the time. The father testified at the FCA 1028 hearing that he was in the bedroom and the child was in the kitchen where an unrelated woman who shared the apartment was cleaning. The father heard the child screaming and came to the kitchen to find him burned. The woman told the father she had no idea how the child had gotten hurt. The medical testimony was that the child had been burned by a hot liquid pouring on the child's head and pouring down his face. The burns could have been from either an accidental or a deliberate pouring of hot liquid on the child. At the FCA 1028 hearing, the father denied knowing how the child could have been hurt although there was testimony that the woman in the kitchen was known to sometimes have a thermos of boiling water. The woman refused to testify. The lower court had returned the child at the 1028. The father made a summary judgment motion to dismiss the abuse petition based on the court's ruling that it found credible the father's testimony that he was not in the room when the child was injured and did not know how it happened. The lower court denied the motion and ultimately found abuse and derivative neglect as to another child upon the father's default. The Second Department reversed the denial of the summary judgment motion ruling that the 1028 evidence established that the father was not in the room when the child was burned. The father had rebutted the res ipsa injury that he had been either abusive or neglectful, shifting the burden to ACS to prove that there was a triable issue of fact and ACS failed to set forth any triable fact. There was a strong dissent citing that the purpose of the res ipsa exception is to in fact not require that the agency prove what happened.

Matter of Andrew B., ___AD3d___, dec'd 3/11/08 (2nd Dept. 2008)

The Second Department concurred with Suffolk County Family Court that a mother abused her son by repeatedly subjecting him to unnecessary medical treatment either due to Munchausen Syndrome by Proxy or otherwise and therefore also derivatively neglected the child's sister. The father's failure to "question his wife's judgment" in her actions regarding the child justified a neglect finding against him.

SEXUAL ABUSE

Matter of Astrid C. 43 AD3d 819, 841 NYS2d 356 (2nd Dept. 2007)

The Second Department concurred that a mother and father had sexually abused and neglected their children. One child's out of court statements regarding her sexual abuse were corroborated by the report concerning similar allegations made by another child of the parents who had been previously freed for adoption. This sexual abuse formed the basis for derivative findings of abuse regarding the siblings currently in the home. The sexually abused child was also neglected by the father's acts of domestic violence and the siblings were derivatively neglected.

Matter of Karen Patricia G., 44 AD3d 658 (2nd Dept. 2007)

The Second Department reviewed a Suffolk County Family Court sex abuse petition that had been dismissed. An 8 year old child alleged that her father had sexually abused her including oral contact. The physical exam had noted the presence of redness on the interior of the child's vagina, consistent with rubbing or touching the tissue with some force and consistent with the child's allegations, although forensic examination of the child's underpants did not disclose any evidence. The father did not testify at the fact finding but there was evidence presented about the contentious nature of the father's relationship with the mother. Family Court dismissed the petition finding that without being able to assess the child's credibility directly such as with an in camera interview, the evidence was not sufficient. The Second Department reversed. Testimony by the child is not required. The child's out of court statements were corroborated by the medical findings as well as by the father's failure to testify. The father abused and neglected his 8 year old daughter. As to the father's 2 year old son who resides with him and his current wife, the Appellate Court remanded the matter for the lower to consider if that child is derivatively neglected or abused. Although the 8 year old girl had a 17 year old brother, the respondent was never the stepfather of that child and has no contact with him and is not legally responsible for him and derivative allegations as to that child were appropriately dismissed.

Matter of Pearl M., 44 AD3d 348, 843 NYS2d 47 (1st Dept. 2007)

A neglect and abuse finding from New York County Family Court was upheld on appeal. The mother abused alcohol and failed to comply with treatment. Her actions resulted in fires in the home, including one when the children were present. The father knew of her problems and failed to protect the children. He also sexually abused his daughter. The child's out of court statements were corroborated by a validator who saw the child several times. The validator assessed the child as behaving like a sexually abused child particularly given her language and demeanor. The child also acted out the sexual activity with an anatomically correct doll.

Matter of Alexis Marie P., 45 AD3d 458, 846 NYS 2d 149 (3rd Dept. 2007)

The First Department agreed with New York County Family Court that a father had sexually abused his daughter. The child's out of court statements were corroborated by medical records and an expert who testified that the child had been sexually abused. The child's hospital records were properly admitted under FCA 1046(a)(vi) as they contained the child's statements regarding prior abuse. The father presented no credible evidence to refute the allegations.

Matter of Frantrae W., 45 AD3d 412, 845 NYS2d 324 (1st Dept. 2007)

The First Department affirmed that a New York County father sexually abused his daughter by having sex with her in 2003 and 2004. Her out of court statements were corroborated by her treating social worker and the respondent stepmother. Although she did recant, this did not invalidate her testimony but raised issues of credibility that the lower court carefully evaluated. The father also engaged in excessive corporal punishment of the child.

Matter of Caitlyn U., 46 AD3d 1144, 847 NYS2d 753 (3rd Dept. 2007)

A 13 year old Albany County child alleged that her stepfather had sexually abused her but at the Article 10 proceeding she recanted. The Family Court found that she and her two younger siblings were abused and neglected by the mother and the stepfather. The Third Department, given deference to the trial court's ability to evaluate the demeanor of the witnesses, affirmed. The child originally disclosed to school officials and gave details of descriptions of sexual acts that the stepfather had required her to perform. The mother was aware of some inappropriate contact between the child and the stepfather, having chastised him for touching the child in an inappropriate way and having observed a "hickey" on the child's neck caused by the stepfather. The child told the school principal, teachers, counselors, the police and the caseworkers of sexual acts by the stepfather and they in turn testified at the Article Ten proceedings about the specific detailed statements the child had made. At the hearing, the child then testified that she could not recall the detailed disclosure and that she had made up the story as she was not permitted any privileges at home and wanted to run away with a friend. The child's recantation was not credible and appeared to have occurred due to pressure applied to her after her original disclosures. The child was concerned that if the stepfather was removed from the home that her family would have to move and her mother would have to get a second job. The child also admitted that she had been punished for her disclosure and that after recanting, she had been granted privileges that she had not had before the disclosures. A sex abuse therapist testified that the child was fearful of residential placement and that in therapist's opinion the child's recantation was false.

Matter of Doe v Francis TT., 47AD3d 283, 848 NYS2d 407 (3rd Dept. 2007)

An Albany County respondent was criminally convicted of First Degree Sexual Abuse of his girlfriend's 10 year old daughter. Family Court found abuse and derivative abuse on a summary judgment motion. On appeal, the respondent argued that a summary judgment motion was inappropriate as he had been denied presenting evidence of the child's possible prior sex abuse by another person in the criminal case due to the Rape Shield Law and he should have been able to present such evidence in the Family court case. The Third Department agreed with the lower court that a summary judgment was appropriate.

ART. 10 DISPOS and PERM HEARINGS

Matter of Marqekah B. 16 Misc3d 1109A (Family Court, Kings County 2007)

Kings County Family Court granted ACS' motion for summary judgment on a severe abuse termination case. The mother was criminally convicted upon a plea for a felony sex offense against the child. The court found by clear and convincing evidence that reasonable efforts were not required. The mother argued that summary judgment was inappropriate and that she should be entitled to a hearing. The mother had moved in criminal court to vacate her plea claiming that she did not know the effect it would have in Family Court. The court expressed doubt that she would be successful in withdrawing her criminal plea and even if she did, the likelihood of reunification would still be quite low. The court will hold a dispositional hearing on the question of terminating parental rights.

Matter of Makynli N., 17 Misc3d 1127(A) (Family Court, Monroe County 2007)

Monroe County Family Court granted a father's motion to dismiss the underlying neglect petition after he complied with the terms of the suspended judgment that had been granted. The court found that a suspended judgment permits the court to thereafter dismiss the neglect allegations if it is in the child's best interests and if the aid of the court is no longer needed. The court differentiated a suspended judgment from an ACD by saying that a suspended judgment could be ordered by the court but an ACD had to be consented to by all parties.

Matter of D.A. 18 Misc3d 200 (Family Court, Onondaga County 2007)

After a child had been in foster care for over 2 years, DSS moved to vacate the foster care placement and place the child with a relative who had filed an Art. 6 petition for custody. The foster mother also filed for custody. The court determined that DSS had not been able to place the child with a relative in a timely manner and that the child had formed a strong bond with the foster mother who is the only mother the child has ever known. The child would be severely distressed if moved from the foster mother's home. The court denied the motion, dismissed the foster parent's custody petition and ordered the DSS to begin termination proceedings.

Matter of August ZZ., 42 AD3d 745, 940 NYS2d 184 (3rd Dept. 2007)

The respondent father in this Cortland County case punched his 4 year old son in the stomach with such force that he ruptured the child's small intestine and the child almost died. The child was not brought to the hospital for 2 days during which air and fluid collected in his body causing pain and vomiting, shock and near death. The child had to have emergency surgery. Upon consent, all three children were removed and the court found the father to have severely abused and neglected the son and derivately abused and neglected the two daughters. The father alleged on appeal that as the Judge was also hearing the criminal case, she should have recused herself, but this issue was not preserved. The father also argued that the DSS motion to dispense with reasonable efforts to reunite with his son was defective. After the Family Court's fact finding decision, DSS moved for a FCA 1039-b order however the motion was returnable in 4 days not the required 8 days. This error is harmless as the father did not challenge the finding of severe abuse and this issue is naturally part of the same allegations. The father has not shown any prejudice from the failure to give the full 8 days of notice. The court also terminated parental rights to all three children, see below.

Matter of Calvin L. 43 AD3d 445, 842 NYS2d 452 (2nd Dept. 2007)

Nassau County Family Court incorrectly dismissed the foster parents' motion to intervene in a case where the father had filed a custody petition seeking the return of his child from foster care. The child has been with the foster parents for over 3 years since she was born. SSL 383(3) clearly states that foster parents who have had children in their home for more than a year are permitted as of right to intervene in any matter concerning the custody of the child.

Matter of Amanda WW. 43 AD3d 1256, 842 NYS2d 614 (3rd Dept. 2007)

A Clinton County father admitted to sexual abusing one of his three children and the children were all placed with their respective mothers. The two daughters, one of whom was the sexual abuse victim were placed out of state with their mother. The son was placed with his mother who lived in the county and the court issued an order that this child would be under the DSS' supervision for a year. The court also issued an order of protection forbidding any contact by the father with any of the children. After a year, the DSS moved to extend the supervision of the son for another year and the father sought visitation. The court then ordered that he could have supervised visitation every other week with his son and that he could write to the daughters via the Law Guardian's office. The father appealed but the Third Department affirmed. The court was permitted to issue an extension of the order of protection given that it was extending the order of supervision. This father has an admitted history of sexual abuse and he needed ongoing counseling. All the parties had agreed to the extension of the supervision of the son's placement. The father admitted that his criminal sentence prohibited his contact with the victim daughter. Given the issues, limited visitation was appropriate.

Matter of Sasha M., 43 AD3d 1402, 841 NYS2d 917 (4th Dept. 2007)

The Fourth Department considered several appeals on a matter from Monroe County Family Court. The mother appealed the original findings and dispositions and then also the later extensions of placement regarding her three of her children. As all of the dispositional orders had since expired and one of the children had in fact been freed for adoption all while the appeals were pending, those issues were moot. As to the finding of neglect regarding the youngest child based on earlier findings regarding the older children, the court affirmed as the mother had still failed to address the mental health issues that had resulted in the original findings on the older children. The older children's placements had just been extended when the youngest child was born and it could be reasonably concluded that the mother's problems still existed. As to the court having issued a FCA 1039-b order that the DHS need not offer reasonable efforts to reunify the youngest child with the mother, the court also affirmed. The mother's rights to a half sibling had already been terminated and it was proven on a clear and convincing level that she had failed to cooperate with mental health treatment and had not demonstrated any significantly improved parenting. In response the mother was unable to show that making reasonable efforts to reunite the youngest child with her would be in the child's best interests, not contrary to the welfare of the child and would likely result in the reunification.

Matter of Bobbjean P., 46 AD3d 12, 842 NYS2d 826 (4th Dept. 2007)

With several amici curiae briefs filed, the Fourth Department reversed Monroe County Family Court's well publicized "no more babies" ruling. Monroe County DHS took no position on the appeal and the Law Guardian supported the dispositional order that a mother be prohibited from becoming pregnant. The Fourth Department concluded that the court had no authority to prohibit a respondent from procreating. The case concerned a newborn baby who had tested positive for cocaine and was removed at birth. At the time, the mother had 3 older children already in foster care. The mother failed to appear after the initial appearance and the finding of neglect was entered by default. The lower court ordered the dispositional conditions that the DHS requested but added an order that the mother "shall not get pregnant again" until she obtained the custody of this child and her other children back. (There was a similar order regarding the father but that matter was not appealed) The court found that the issue was one that fell within the exception to the mootness doctrine. The mother, when she did appear, moved to vacate the default order and the lower court denied the motion to vacate ruling that she had willfully refused to appear. The Fourth Department found that regardless of the willfulness issue, the mother had no expectation that the court would issue such an unprecedented order and should have afforded the mother an opportunity to be heard. Family Court is a court of limited jurisdiction and only possesses the power the statutes give it. There is no permissible term or condition in the statutes or Family Court rules that would allow a court to limit procreation. The Fourth Department rejected the argument that the court's ability to order "medical treatment" impliedly authorized a no procreation or a birth control order. Most importantly, the order not to procreate does nothing to remedy the

acts of neglect or safeguard the well being of the child which is the purpose of a dispositional order. Constitutional issues need not be addressed give the lack of authority to include such an order in a disposition.

Matter of Seth Z. 45 AD3d 1208, 846 NYS2d 729 (3rd Dept. 2007)

In an anticipated decision, the Third Department reversed its controversial ruling of last year contained in **Felicity II 27 AD3d 790 (3rd Dept. 2006)**. A Warren County child was placed in foster care upon a finding of neglect against his mother. The child's maternal aunt and her husband wanted the child to be placed with them. They requested a FCA 1017 placement and also filed an Art. 6 petition. DSS did not believe they were a suitable placement and opposed any method of placing the child in their home. Family Court denied the 1017 request and dismissed the custody petition without a hearing. On appeal to the Third Department, several significant points were made. First DSS correctly assessed the relatives as a placement resource under 1017 and provided the court with reasons why it thought any placement with the aunt and uncle was not suitable. The lower court agreed with the agencies findings in the 1017 investigation and ruled that there was no suitable relative placement for the child. The relatives were not entitled to a hearing on the 1017 request as the statute does not provide for one. Secondly, the relatives were not entitled to a hearing under FCA 1028-a as the DSS took the position that they would not qualify as foster parents and the 1028-a hearing is only available to relatives who are being denied a placement for *other* reasons than failure to qualify as foster parents. The relatives in fact did not even request foster parent status. Lastly, the court should have granted the relatives a hearing on their Art. 6 custody petition. Warren County DSS relied on **Felicity II** arguing that the Third Department had held there that no petition of custody could be filed after an Art. 10 disposition unless the parents consents. The Third Department reversed its finding in **Felicity II**, finding that subsequent changes to FCA 1017(2)(a)(i) "recognize and accept an interplay between Family Court Act Articles 6 and 10". Although the likelihood of a successful Art. 6 proceeding seems low given the court's decision not to place with the relatives under FCA 1017; the lower court should have not dismissed the Art. 6 without a hearing.

Matter of Edward V., 45AD3d 1213, 846 NYS2d 732 (3rd Dept. 2007)

The Third Department reviewed a matter from Broome County Family Court that involved from both Art. 10 and Art. 6 petitions. The mother of two children and her current boyfriend were the respondents in an Art. 10 action where it was alleged that the younger child twice had unexplained linear bruises on his buttocks. The fathers of both children sought custody of their respective child. The Art. 10 was resolved with an ACD and at the disposition, the court handled the custody petitions as well. The father of the older child did not appear and had been arrested on a domestic violence. That child was placed with the mother who was ordered to complete anger management, parenting classes and work with a parent aide. The younger child was placed with his father,

where he had been placed during the pendency of the action, even though the DSS had indicated that the mother's parenting had improved. The lower court also extended the supervision period of the ACD. On appeal, the mother argued that an ACD cannot be extended without the parties' agreement. DSS argued that the court had not extended the ACD but instead extended the order of supervision. The Third Department responded that this issue was moot because in any case the order had expired pending appeal. The Appellate Court also found that releasing the child to his father was appropriate. The father was employed, had provided suitable care, housing and transportation for the boy and indicated that he will make sure that visitation will be available for the mother. The mother had been the child's primary caretaker and the neglect had resulted in only an ACD but still the child had sustained substantial, unexplained linear bruises on his buttocks when he lived with the mother and her boyfriend. Serious questions remained as to the mother's ability to provide a safe environment.

Matter of Lafvorne B. 44 AD3d 653, 841 NYS882 (2nd Dept. 2007)

Westchester County Family Court correctly found that DSS was making reasonable efforts to finalize a permanency plan for the child. The caseworker testified that DSS was dealing with the child's educational, medical and behavioral issues and was trying to place the child for adoption with a cousin. The Law Guardian's argument that the agency was not willing to make the cousin a foster home is not a proper appellate issue and the challenge to certification of a foster home should be handled through an Art. 78 proceeding.

Matter of Michael WW., 45 AD3d 1227, 846 NYS2d 739 (3rd Dept. 2007)

In a freed child permanency hearing, Clinton County Family Court found that DSS had not made reasonable efforts to achieve permanency for the child. DSS appealed and the Third Department reversed. The child had serious problems and was in a residential facility. In January of 2006 at a freed child review, the court ordered the agency to take all steps to place the child in a facility that would provide for his needs as a mentally retarded sex abuse offender and victim and therefore enhance the possibility of an adoption in the future. At the next hearing in June, the child had just the week before been placed in a facility in Massachusetts and the lower court found that this delay in a placement did not constitute reasonable efforts. The Third Department reversed, finding that within 2 weeks of the court's order, the agency investigated all institutions in New York State and could find none that would assist the child. They then looked to institutions outside of the state and located 3 or 4 facilities of which 2 were willing to interview the child. Within one week of learning that 3 facilities had offered the child an opening, the agency selected one in Massachusetts and then began the ICPC process. ICPC approval could not be obtained until a specific facility had been picked. Within days of the compact approval, the intuition indicated that there was no opening but that there would be one in a matter of weeks. Thereafter, the caseworker contacted the facility on a weekly basis to see if there was an opening and was each time told that the child was number one on the waiting list. The child was then finally placed at the facility just days before the freed child review. The agency had also photo listed the child for

adoption, continued contact with relatives and the foster home of his brother and wrote the court twice a month on the status of the attempted placement. The Third Department indicated that the lower court was “understandable frustrated” with the efforts of the agency before the order to locate a facility suitable for the child but subsequent to the last freed child review and its order, the agency did provide reasonable efforts to further the child’s permanency.

Matter of Matthew M., 46 AD3d 903, 847 NYS2d 865 (2nd Dept. 2007)

The Second Department rejected a mother’s appeal and concurred with Queens County Family Court that the court was permitted to order as a disposition that the child was simply released to the father without any agency supervision.

Matter of Breevanna S., 45 AD3d 498, 847 NYS2d 515 (1st Dept. 2007)

The First Department concurred with New York County Family Court that a father’s suspended judgment should be revoked and the child placed in care. The preponderance of the evidence established that the father had violated the conditions of the suspended judgment. He had deliberately not disclosed that he had previously been found to have physically and abused another one of his children. He also refused to accept responsibility for the prior abuse.

Matter of Caitlyn U., ___AD3d___ dec’d 2/21/08 (3rd Dept. 2008)

The Third Department affirmed Albany County Family Court’s disposition in a sexual abuse matter. It was appropriate for the court to order the abusing father to attend sexual abuse treatment even though the program will require him to admit the sexual abuse which he denies. It is also appropriate to issue an order of protection that he not be allowed to reside with the children since he will not admit the abuse and the mother does not admit his abuse and has failed to protect the abused child from him. Further, it was appropriate to deny him even supervised visitation with the child who was sexually abused without some additional assurance, such as completion of a sexual offenders program, that he does not pose a safety risk to the child.

Matter of Blaize F., ___AD3d___, dec’d 2/28/08 (3rd Dept. 2008)

While affirming a Clinton County Family Court’s jail sentence of 90 days for a respondent father who failed to participate in court ordered sexual offender treatment, the Third Department ruled for the first time that the burden of proof to establish a willful violation of a Family Court order is “clear and convincing” given the potential penalty of imprisonment.

Matter of Anthony Q., __AD3d __, dec'd 2/28/08 (3rd Dept. 2008)

On the appeal of a permanency hearing from Columbia County Family Court, the Third Department found that a permanency hearing report is admissible, even though it contains hearsay. The statute itself makes it admissible and all parties receive it in advance for the purposes of ample opportunity to present proof challenging it. Also, brief adjournments for appropriate reasons are not inappropriate even if they result in the permanency hearing not being completed within the statutory timeframe of 30 days. Even if the timeframe had been briefly but unjustifiably delayed, the remedy would not be immediate return of the child.

ABANDONMENT TPR

Matter of Jasmine J. 43 AD3d 1444, 844 NYS2d 533 (4th Dept. 2007)

An Erie County father abandoned his child. He only sent the caseworker one letter in the relevant 6 months. Although he claimed that he had asked the caseworker for the foster parent's address, the caseworker denied that he had asked for it and the lower court found the caseworker credible. The father also told the caseworker that he would like his fiancée to care for the child and the caseworker did not contact him after she was unsuccessful in contracting his fiancée. An abandonment termination does not require any proof that the agency engaged in efforts to assist the parent including contacting the parent or initiating efforts to encourage a relationship with the child.

Matter of Tiffany RR., 44 AD3d 1126, 843 NYS2d 477 (3rd Dept. 2007)

The Third Department affirmed Saratoga County Family Court's termination of an incarcerated father's rights based on abandonment. The one month old child's arm was broken while in her father's care. Family Court adjudicated the child as abused. The father also was sentenced on the criminal charge to 1 to 3 years in prison. Family Court issued an order of protection that the father was to have no contact with the child until her 18th birthday but allowed the father to apply for a modification of the order in 2 and ½ years. The DSS filed to terminate the father's rights when he did not maintain contact. The order of protection did not prevent the father from contacting the agency or from inquiring as to the status of the child and he did not do so and therefore he did abandon the child. Neither the order of protection nor his incarceration excuse him from his total lack of attempted contact. Although the father claimed he thought the order of protection prohibited him from contacting anyone about the child, he admitted that he had read the order and that he did not prevent him from contacting the agency. The caseworker had contacted him on two occasions and he had asked his mother about the child's status and so his claim that he thought he could not inquire about the child is not credible,

Matter of Medina Amor S., __AD3d __, dec'd 1/10/08 (1st Dept. 2008)

The First Department reversed an abandonment termination of an incarcerated father from the Bronx. The two children had been in foster care since 2000. The mother's whereabouts were unknown and she did not appear in court. The father was in prison on a murder conviction when the children went into foster care. He will not be out of prison until they are both over 18 years old. The First Department found that the father had reached out to an agency that assisted with family visitation issues for the incarcerated. This agency helped communicate with the caseworker which did result in one visit. This agency's records reflected that the father sent cards and letters for the children. Although he did not contact the caseworker himself, this was because he did not know the caseworker's name and the prison rules required that he have a specific name to make a phone call. The Appellate Division was quite shocked by the caseworker's testimony that she did not contact the father because she did not know she could do so and did not know that she would be allowed to contact him. Although the agency does not have to prove diligent efforts in an abandonment termination, the agency in fact did nothing to assist in his communication with the children. The Family Court should not have terminated parental rights based on a "best interest" analysis that the children needed to be adopted, or because the father was incarcerated and would be until the children were adults. The grounds of abandonment require a showing that the parent evinced an intent to abandon and this father in fact attempted within his circumstances to remain in contact with the children.

MENTAL ILLNESS and MENTAL RETARDATION TPR

Matter of August ZZ., 42 AD3d 745, 940 NYS2d 184 (3rd Dept. 2007)

The Third Department agreed with Cortland County that the father was mentally ill to the extent that his parental rights to his three children should be terminated. The children were in care due to the father's severe abuse of one of the children (see above). The father was schizophrenic, paranoid type and he admitted to being mentally ill. The court appointed expert reviewed the father's extensive records and saw the father twice and gave him testing. Multiple caseworkers and documents also supported the expert's conclusion that the father's mental illness resulted in the children being unsafe in his care. Although he was somewhat stabilized at the time of the hearing due to medication and the fact that he was committed to a mental institution, historically he was not compliant with treatment, medications or commitments.

Matter of Natasha RR., 42 AD3d 762, 839 NYS2d 623 (3rd Dept. 2007)

The Third Department reviewed in great detail the Columbia County termination of parental rights of two parents based on mental retardation and reversed the terminations. The child had gone into foster care at 15 months of age based on a finding of neglect against both of the parents. (The Appellate Court noted that they had reversed the

father's neglect finding some two years later) After the child had been in foster care for 2 years, the DSS informed the court that they intended to return the child to the parents and at the next permanency hearing DSS requested that the child be returned. At the permanency hearing, the lower court "gratuitously" found that the parents were incapable of parenting the child safely due to their limited intellectual functioning and the court changed the child's goal to adoption. The mother appealed that finding and while that appeal was pending the DSS brought termination petitions on mental retardation grounds against both parents. The Third Department reviewed both the appeal of the permanency hearing as well as the subsequent termination in this decision.

The Third Department carefully reviewed all of the testimony. The father had an IQ of 72 and the mother had an IQ of 69. The clinical psychologist who had the most contact with the parents said they were not mentally ill but did have "profound deficiencies" in their mental abilities. He also found them "very very motivated" and "compliant". He admitted that he had struggled with his opinion but felt the parents could parent the child safely particularly as they understood that they had limitations. They understand that they need outside help and they do whatever is asked of them. He did not think 24 hour a day support was necessary but did feel that at least weekly the child should be seen by outside services. He thought they could deal with obvious emergencies but not do well with more subtle problems. There was a great deal of testimony from many service providers who were highly supportive of the parents and who described an obvious bond with the child. The involved service providers supported the parenting abilities of the couple and the potential for a successful reunification. There were in fact many services in the community that could assist the parents with the child. The grounds for a mental retardation termination were not proven.

Matter of Charles FF., 44 AD3d 1137, 844 NYS2d 455 (3rd Dept. 2007)

A Columbia County mother voluntarily placed her two sons in foster care and 18 months later, the county filed to terminate her rights on both mental illness and mental retardation grounds. The Third Department affirmed the Family Court's termination. The expert testified that the mother had a borderline range of intellectual functioning as well as a panic disorder, agoraphobia and a borderline personality. He did opine that medication might help the panic disorder but this would only be a partial solution at best. Her personality disorder is largely untreatable and her IQ will not increase such that she can care safely for the children. The mother argued that termination was not in her children's best interests. Given the fact that mother's problems are not resolvable, there is no reason to prolong the matter. The law does not provide for a suspended judgment, as the Law Guardian argued for, in mental illness or mental retardation terminations. Although there is no current adoptive resource for the children, parental rights can still be terminated when it is in the children's best interests to do such that a permanent home can be found for them, despite the bond with the mother.

Matter of Tiffany T., 45 AD3d 319, 845 NYS 2d 255 (1st Dept. 2007)

The First Department affirmed New York County Family Court's termination of a mother's rights due to her mental limitations. She was mentally retarded, had poor adaptive functioning and was depressed. She would not be able to care for her special needs child for the foreseeable future. There was evidence of a strong bond between the mother and the child but termination and adoption is in the best interests of the child.

PERMANENT NEGLECT TPR

Matter of Amy B. 37 AD3d 600, 830 NYS2d 294 (2nd Dept 2007)

An Orange County Family Court's termination of a father's rights was affirmed by the Second Department. The agency offered diligent efforts by providing caseworker counseling, supervised visitation, treatment for the family around the sexual abuse issues. The father initially admitted the sexual abuse but later refused to acknowledge the abuse and the mother denied that any abuse had occurred. The father failed to complete the sexual offender treatment program. He was discharged as he failed to make any progress. The mother claimed she was never offered any means to have reunification with the children separate from the father but since she would not acknowledge the abuse, she could not protect the children. "A parent's efforts to remedy the conditions which resulted in a child's removal are clearly unsatisfactory when they consist of a mere denial of all culpability or responsibility for past conduct". Their failure to admit the abuse prevented them from progressing in therapy and therefore means they did not adequately plan for the children. The oldest child has turned 18 years of age and so the order as to her is academic but the freeing of the younger child for adoption was appropriate.

Matter of Arelis Jasmin L. 39 AD3d 433, 835 NYS2d 108 (1st Dept. 2007)

A New York County mother permanently neglected her daughters. The mother failed to attend therapy consistently and refused to believe that her brother, the children's uncle, had sexually abused one of the girls when the child was 7 years old. The mother refused to acknowledge her responsibility to protect the children from further abuse. The children have lived most of their lives with the foster mother, are bonded to her and have thrived there.

Matter of Amber L 39 AD3d 651, 835 NYS2d 251 (2nd Dept. 2007)

The Second Department agreed with Orange County Family Court that a mother had permanently neglected her child. The agency had offered her diligent efforts but the mother would not end her romantic relationship with a level three sex offender. This relationship was the reason for the child's placement in foster care.

Matter of James X. 37 AD3d 1003, 830 NYS2d 608 (3rd Dept. 2007)

The Third Department affirmed a Cortland County Family Court termination of a father's rights to his 7 year old son. The father had lived with the child at earlier points but when the child came into foster care, the child had been in the mother's home. The mother ultimately surrendered her parental rights. The agency worked with the father after the child was removed from the mother on issues regarding sexual abuse. Although he had not been found to have abused this child, he had plead guilty to sexually abusing a 9 year old niece and had been found by Family Court to have sexually abused a different son. In both cases, he was ordered to obtain sexual abuse treatment and he did not do so. He had an extensive history of indicated child protective reports and had also sexually abused yet another unrelated child. Due to this history, DSS required that he obtain sexual abuse counseling for any potential return of this child. They offered diligent efforts involving weekly supervised visitation and anger management programs. The caseworkers repeatedly indicated that he would have to complete sexual abuse treatment and he repeatedly refused to do so saying that he did not have a problem with sexual abuse. He lived in a home with several adults who also had extensive child protective histories. He offered "myriad invalid excuses" for not becoming involved in sexual abuse treatment. His basic failure to accept responsibility for his repeated sexual abuse of children is a failure to plan for this child's return and necessitates a termination of parental rights. There is no reason to offer a suspended judgment in this situation. Lastly, in response to the respondent's request that the court consider allowing him visitation with the child even if his rights were terminated, the Third Department stated that "... It is axiomatic that when parental rights are terminated pursuant to an adversarial proceeding that results in a finding of permanent neglect, the court lacks the authority to permit visitation to a respondent". (Note: No mention was made of the 4th Department's **Kahlil S.** ruling just 2 months earlier that allowed court to consider ordering post termination visitation on a mental illness TPR)

Matter of Kimberly C. 37 AD3d 192, 829 NYS2d 84 (1st Dept. 2007)

Both Bronx County parents appealed the termination of their rights. The First Department affirmed the lower court. The parents were aware of the fact that they needed to become involved in domestic violence counseling but "incredibly and repeatedly" denied that they needed such counseling. Their attendance at the counseling was insufficient and they failed to gain insight, accept responsibility or modify their behavior. The father also denied his clear need to attend substance abuse counseling and he failed to complete that as well. Both parents only visited the child sporadically. The child has lived her whole life with her foster parents who are also her maternal great aunt and uncle. She will be able to still see her natural parents and her siblings as they are living with her maternal grandmother.

Matter of Jamie Rumbel C., 43 AD3d 762, 842 NYS2d 422 (1st Dept. 2007)

The First Department agreed with Bronx County Family Court that the agency was excused from diligent efforts where the father failed to keep the agency apprised of his location for at least 6 months. He also failed to cooperate with the agency in that he failed to let them know that he had already obtained a filiation order and only visited the child quite sporadically. He had no plan for the child's future and no resources to offer the child.

Matter of Tynell S., 43 AD3d 1171, 842 NYS2d 90 (2nd Dept. 2007)

Kings County Family Court terminated the rights of both parents to three children. The Law Guardian argued that the appeals had been filed untimely and should be dismissed (the Family Court order was dated 18 months before this decision was issued) but the Second Department found that as there was no proof that the Family Court had mailed the orders to the mother, there was no way to determine if the mother filed her notice of appeal within the time frame and so would not dismiss the appeal. The agency did offer the parents diligent efforts toward reunification. They scheduled regular and meaningful visitation and referred the parents to domestic violence programs. The father admitted that he never attended any DV program. The mother attended some but did not complete any. The mother also never acknowledged her responsibility for the abuse findings in this matter. Neither parent gained insight into the issues that had resulted in the children's placement and did not address their issues. Two of the children had been in with the foster family since 1995 (yes, that would be 12 years) and the third child had been there since her birth in 1996.

Matter of Noemi D., 43 AD3d 1303, 842 NYS2d 808 (4th Dept. 2007)

The Fourth Department affirmed a Cattaraugus County termination of a mother's rights to her daughter. The agency exercised diligent efforts by offering substance abuse counseling, biweekly visitation, and joint counseling with the child. The mother was unable to recognize the child's special needs as well as her own role in contributing to the child's psychological problems, including reactive attachment disorder. The child's psychological reports were admissible under the business record rule. It was proper to allow the child's psychologist to testify about the child's out of court statements as they were offered to show the child's state of mind rather than to establish the truth of the matter asserted. The court need not have offered a suspended judgment as no significant progress had been made by the mother.

Matter of Dakota S., 43 AD3d 1414, 842 NYS2d 665 (4th Dept. 2007)

A Chautauqua County termination of a father's rights to his three children was affirmed by the Fourth Department. The father failed to successfully complete the sexual abuse counseling that he was ordered to attend. Although he had made some progress, he continued to deny his history of sexual abuse, he did not have housing, and he had not completed the parental counseling and did not visit the children on a regular basis. The

father's limited progress did not warrant a suspended judgment. Certain portions of an ICPC report from Georgia should not have been admitted into evidence as the statements were hearsay and there was no proof that the reporter had a business duty to report the information but the error is harmless. The issue concerned the father's need to be in sexual abuse treatment but the Chautauqua court had already ordered that the father should participate in sexual abuse counseling.

Matter of Mentora Monique B. 44 AD3d 445, 843 NYS2d 284 (1st Dept. 2007)

The First Department affirmed the fact finding of permanent neglect in this New York County matter but remanded it for a new dispositional hearing given the significant changes that had occurred in the children's' situations in the two years that the appeal had taken. The agency had provided diligent efforts in that they worked with the agencies that had the mother's other children and coordinated services. Biweekly visitation was offered to the mother – except with the oldest child who refused to see her mother. The mother missed 75% of the visits. She continued to deny responsibility for the severe sexual abuse that had been committed on the children. For the first year that the children were in placement, she refused to accept any referrals for service. She missed 2 mental health referrals and only finally went to a mental health evaluation after the children had been in care for almost 2 years. She failed to attend AA and failed to inform the agency of her long term PCP abuse problem. The Appellate Court did remand the matter for a new dispositional hearing. While the appeal was pending, the foster mother of the two younger children passed away and the children who are now 13 and 14 are currently unsure if they want to be adopted in the new foster home of family friends. The oldest child has had 2 children of her own and no longer resides in the adoptive home that she was in during the Family Court proceeding. She resides in a mother-child group home but wishes to live with a former foster mother with whom she has continued contact. The matter is returned to review the children's current situation.

Matter of Eddie Christian S. 44 AD3d 504, 845 NYS2d 321 (1st Dept. 2007)

A Bronx County father's parental rights were properly terminated. The agency offered diligent efforts to the incarcerated father by informing him of the need to locate a resource for the children and by exploring all the resources he suggested. Also the agency kept him aware of the children's progress and arranged for visitation at the prison while the father was incarcerated in the state. When the father was transferred out of state, it was reasonable to terminate the visits as the travel would have been too difficult for the young children. The father failed to plan for the children as none of the resources he provided to the agency were viable. The children have lived most of their lives with their foster mother who wishes to adopt them.

Matter of Milan N. 45 AD3d 358, 846 NYS2d 18 (1st Dept. 2007)

The Bronx County Family Court properly determined that the agency was not required to provide diligent efforts to encourage the parental relationship as further efforts to do so were not in the best interests of the children. The mother had sexually abused the two

children and had been ordered to stay away from one of them. The mother had been criminally convicted of endangering the welfare of a child. Mental health expert testimony demonstrated that contact between the mother and the children would be detrimental to the children. The mother continued to deny responsibility for the abuse and therefore failed to plan meaningfully for the children while they had remained in foster care for an extended period. It was in the children's best interests to be adopted by their foster mother. They have a close relationship with her and she meets their needs.

Matter of Melissa DD., 45 AD3d 1219, 846 NYS2d 475 (3rd Dept. 2007)

The Third Department reviewed a termination proceeding brought against a mother and one of the fathers of four of her children and affirmed Broome County's termination. The children had been in foster care since the fall of 2003. The agency provided diligent efforts to the parents. A parent aide was assigned. Biweekly visits were set up and the parents were given a bus pass. Arrangements were made such that they could call the foster home twice a week to talk to the children. The mother was provided with referrals to parenting and codependency classes and the father was provided with parenting classes, anger management and domestic violence counseling. While the parents did attend most of the visits with the children, cleaned up their apartment and completed parenting classes, they failed to resolve other issues. They missed half of the children's medical appointments, several special education meetings and only called the children about twice a month. The mother did not complete her codependency counseling and the father has not completed his anger management or domestic violence counseling. A suspended judgment was not appropriate. Although the mother had completed the codependency counseling by the time of the dispositional hearing, she did not follow up with their recommendation of mental health counseling even though the counseling services suspected that she had an undiagnosed bipolar condition that needed medication. The father had completed anger management counseling by the dispositional hearing but had not even arranged for domestic violence counseling. The parents had separated twice in the six month between the fact finding and the disposition with the police being called on two occasions due to their domestic violence. The parents had four different addresses in the last year. These parents had been under various court orders to improve parenting since 2001 and have never resolved their problems. A suspended judgment would only delay permanency for these special needs children. The Third Department ruled that given the parental rights were being terminated instead of surrendered, the Family Court "had no authority to permit post termination visitation" between the mother and the children. (Note: no comment re the 4th Departments ruling in **Kahlil S**)

Matter of Ty'Keith R., 45 AD3d 1397, 846 NYS2d 489 (4th Dept. 2007)

The Fourth Department affirmed Onondaga County's termination of an incarcerated father's rights to his son. The agency was not required to prove diligent efforts due to SSL 384-b(7)(e)(ii) which exempts diligent efforts where an incarcerated parent fails on more than one occasion to cooperate with the agency. In any case, the DSS did offer diligent efforts but the father was ineligible to participate in the prison programs recommended as he was in disciplinary confinement for committing infractions. The

child had no relationship with the father and had bonded with his foster parents. There was no reason to provide a suspended judgment and the child was in need of a stable and permanent home.

Matter of Milton K. 47 AD3d 261, 848 NYS2d 97 (1st Dept. 2007)

The First Department affirmed the dismissal of a permanent neglect petition against a father regarding a boy who has been in foster care since 1997. The child's mother is deceased and the child has lived with his great aunt since 1997 when he was less than 2 years of age. The father has totally rehabilitated himself and has done everything the agency has asked of him. He has been sober since 1997, has a three bedroom apartment and completed all the programs requested of him. In 2001 however, problems developed with visitation. The child, who was then 6 years old, had various complaints about visiting with his father - evaluations concluded that the child had severe anxiety about leaving the great aunt who he viewed as his primary parent figure. The child simply rejected the father's attempts to create a positive and bonded relationship despite many efforts by the father. The grounds of permanent neglect require that the parent have failed to plan for the child's return but this father did plan for the child's return and should not have his rights terminated. The court denied that this left the child in some sort of "limbo" that damaged the child. There was no proof that continuing to try to create a relationship between the father and his son will likely cause emotional harm to the child.

Matter of Gloria Melanie S. 47 AD3d 438, 850 NYS2d 46 (1st Dept. 2008)

The First Department agreed with the Bronx County Family Court that a father's rights should be terminated. The agency offered diligent efforts but the father refused to acknowledge his sexual abuse of the child. The father also testified that he did not need sexual offender therapy and would not attend. The agency was not required to refer the respondent to a sex offender program that would accommodate his denial.

Matter of Shi'ann FF. 47AD3d 1133, 850 NYS2d 678 (3rd Dept. 2008)

The Third Department reversed Rensselaer County Family Court's termination of a father's rights. He was incarcerated but spoke to the child by phone weekly, sent over 200 cards and letters and gave the foster parents money for phone calls and presents. He agreed with DSS that the plan for the child was reunification with the mother. The agency failed to provide him with diligent efforts toward reunification. They did keep him aware of how the child was doing but did not provide visitation other than to instruct him about filing to obtain visitation and gave him incorrect legal information as to how to do that. He was not informed of his need to plan for an alternative to reunification with the mother until after termination petitions had been filed against both parents and the mother had surrendered.

TPR DISPOS

Matter of Melissa M. 36 AD3d 919, 827 NYS2d 676 (2nd Dept. 2007)

The Second Department agreed with Orange County that a mother had violated the terms of her suspended judgment. The Family Court did not hold a separate dispositional hearing on the child's best interests after finding the violation. That is acceptable where the court had presided over prior proceedings of the family and the record shows that the court had knowledge of and made dispositional rulings based on the children's best interests.

Matter of Alanda Helen M. 39 AD3d 859, 835 NYS2d 619 (2nd Dept. 2007)

The Second Department reviewed the terminations of 6 siblings who were the children of a Kings County mother. The Appellate Court found that as to four of the children, termination was appropriate as those four children had foster mothers who wished to adopt them and also were willing to continue to maintain a sibling connection. However, the Second Department reversed the termination on two other children. One child is in a residential home and is very troubled. Another child is 14 years old and expressed a strong desire to be with the mother and does not want to be adopted. She has run away from foster care twice, both times running to her mother. The Appellate Court found that these two children had "little likelihood" of being "suitable for adoption" The court remanded the matter for the court to review alternative dispositions for these two children.

Matter of Shakima Renee M., 43 AD3d 343, 841 NYS2d 270 (1st Dept. 2007)

After finding that both parents had violated the suspended judgment on their underlying permanent neglect matter, New York County Family Court terminated the parents' rights to two daughters. On appeal, the First Department reversed the termination and remanded the matter for a new dispositional hearing given that there was no adoptive plan for the children. One child is over 14 and she will not consent to an adoption and therefore a termination of parental rights will serve no useful purpose. The other child is currently over 13 years old and has in the past expressed a desire not to be adopted but may not be expressing a desire to be adopted at this time. The lower court should hold a new dispositional hearing in which this child should formally testify as to her current position on adoption, and also there should be testimony from the agency regarding any viable adoption plan. Even if the child is not yet 14, she is only months from her 14th birthday and her wishes should carry substantial weight. Also the court should consider if freeing the 13 year old for adoption will have any possible negative effects on the 13 years olds relationship with her siblings. Lastly the new disposition will allow the court to consider the appropriate role of the father in these two girls' lives in view of any changes in his situation. The Appellate Court also noted that the underlying termination petition in this matter had been filed 6 and a half years earlier.

Matter of Michael Phillip T., 44 AD3d 1062, 845 NYS 2d 790 (2nd Dept. 2007)

The Second Department ruled that hearsay was admissible in a violation of suspended judgment hearing. The burden of proof is preponderance. Here a termination was appropriate where the Kings County mother had violated the suspended judgment by continuing to abuse drugs and was discharged from her drug treatment program.

FATHERS RIGHTS

Matter of Luis S. 39 AD3d 377, 833 NYS2d 506 (1st Dept. 2007)

Bronx County Family Court properly dismissed a motion by a putative father for a DNA test. The “father” waited 16 months to allege paternity and has never had any contact with the child who has been with foster parents since she was 10 months old. The putative father is now equitably stopped from claiming paternity. The court did not need to have the testimony of a psychological expert regarding any negative effect on the child in order to determine that the putative father’s claim is estopped.

Matter of Hassan Lawrence W. 42 AD3d 573, 840 NYS2d 140 (2nd Dept. 2007)

Westchester County Court correctly found the father in this matter to be a “notice father”. The DSS filed a termination petition against the mother of a child in foster care. The father appeared but he had not maintained substantial or continuous contact with the child or the child’s caretaker while he was incarcerated and had never paid child support. Now released from jail, the father’s current interest is not prompt or substantial and his consent is not needed for the child to be adopted.

Matter of Seasia D. 46 AD3d 878, 848 NYS2d 361 (2nd Dept. 2007)

Queens County Family Court dismissed an adoption proceeding ruling that the birth father was a consent father and he was refusing to grant his consent and was seeking custody. The birth mother’s surrender was also technically flawed. On appeal the Second Department affirmed and ordered that the lower court hear the birth father’s custody petition and determine where the child will reside while the custody petition is pending. As to the status of the birth father, the court found that he had impregnated the mother when she was a 14 year old foster child. The mother was thereafter adopted by her foster mother who was also the mother’s grandmother. As soon as the pregnancy was discovered and all during the pregnancy, the father, who was 17 years old, and his family attempted contact with the mother and her family. Although there had been allegations of forcible rape, there was no proof of force and the matter would also not have been statutory rape given the father’s age. The father’s family attempted many times to communicate with the mother’s family, offering to buy maternity clothes, asking to have contact with the birth mother but the mothers’ family repeatedly and consistently rebuffed the requests. The father could not locate the mother although he and his family

made many efforts through church and child welfare agencies to try to locate her. The mother's family told him that they would have him arrested if he showed up at the baby's birth. The father attempted to file a paternity petition but was incorrectly told that he could not do so until the child was born. He did not know of the existence of the putative father registry. The father was not told of the child's birth but was informed 9 days after the birth that the child had been born and was going to be adopted. The mother had signed an extrajudicial surrender of the child within 2 days of birth. After much effort, the birth father secured the address of the birth mother and promptly commenced a paternity and custody proceeding less than one month after the child's birth although this was after the child had already been placed for adoption. The court found that the father's ongoing and extensive efforts to identify himself as the baby's father and become involved in plans for the child made him a consent father.

The mother's extrajudicial surrender of the child was invalid as well since the mother was 14 years old and was under duress when she signed it. The evidence showed that her adopted mother had threatened to return her to foster care if she did not give up the baby. The birth mother did not have independent counsel to consult with and her stated wishes to discuss an open adoption were not acted upon.

There was a strong dissent whose position was that the birth mother could execute a new surrender and that the father was not a consent father as his efforts to learn of the plans regarding the child were not efforts that demonstrated an intent to parent the child.

(Note: The child would have been 3 years and 8 months old at the time of the Second Department decision)

Matter of William B., 47 AD3d 983, 849 NYS2d 123 (3rd Dept. 2008)

The Third Department reviewed a matter from Broome County Family Court involving a child who had been in foster care since birth. The mother had first alleged another man was the father but then named the respondent who had lived with her in the year before the child was born. The respondent was incarcerated and during the neglect proceeding he was listed on the legal paperwork as a putative but nonadjudicated father. He was aware of the pregnancy and the subsequent birth of the child but made no effort to contact the mother, the child or the agency. The DSS brought abandonment terminations against both the mother and the father. The mother then brought a paternity proceeding against the father and DNA testing established that he was the father. The father moved for the termination petition to be dismissed arguing that the abandonment time period can only start to run after a person has in fact been declared to be the father. The Family Court dismissed the motion, found abandonment and terminated the father's rights. On appeal, the Third Department indicated that in an abandonment termination against a father a threshold issue is if the legal status of the father – is he in fact a "consent" father. Even where it appears that the father was not a consent father, the proper procedure is not to dismiss the termination but to conduct a hearing and make the determination on the threshold issue of whether the man is a "consent" father. A belated interest in a child does not create a right to consent. Here the father was clearly not a consent father but

given mother's attempt to have him named the father at a point in time, it was appropriate for the agency to seek clarification of the father's status and not wait until an adoption proceeding. The claim that the abandonment clock does not start to run until a paternity finding is "antithetic to the promptness required of an unwed father is showing interest in his child". Under the circumstances here, it was not inappropriate for the lower court to also extend its decision to not only that rule on the issue of consent status but to also find abandonment.

Matter of Marie ZS., 47 AD3d 412, 848 NYS2d 649 (1st Dept. 2008)

The First Department agreed that the father in this matter was only a "notice" father and although he appeared, his only role was to participate in the dispositional hearing of the mother's termination on the issue of the child's best interests. The Appellate Court agreed that the father cares for the child and has made some changes but he does not have a stable home for the child. He does not have adequate housing or a viable plan for day care for the child. He has been inconsistent in his visitation with the child.

SURRENDER and ADOPTION ISSUES

Matter of Carrie W., 37 AD3d 1059, 830 NYS2d 406 (4th Dept. 2007)

A Cayuga County mother had surrendered her rights to her three children with an agreement that the children would be adopted by the paternal grandfather and his wife. The agreement contained a clause that she would be allowed to visit the children every week as long as she did not miss two visits within a 12 month period unless there was a crisis beyond her control. The birth mother filed a petition to enforce the visitation and claimed that the grandfather was not permitting visits. The mother however had not visited the children in a year and the mother had not alleged any "crisis beyond her control". Further her petition did not allege why the visitation would be in the children's best interests. The Fourth Department found that the Family Court had properly dismissed the petition without a hearing.

Matter of Rebecca O., 46 AD3d 687, 847 NYS2d 610 (2nd Dept. 2007)

In 2004, a biological mother surrendered her child for adoption with conditions that she be allowed to visit 4 times per year and also be able to send cards, letter and pictures. Six months after the surrender the child was adopted and the contact attempts were rebuffed. The birth mother sued the adoptive mother in Suffolk County Family Court for enforcement of the terms of the contact and under a best interest analysis; the Family Court ordered that the contact should be permitted. The adoptive mother appealed to the Second Department. The Appellate Court found that the new conditional surrender law gave the birth mother standing to seek enforcement of the surrender terms and that best interests of the child should be the standard for enforcement. The record supported that

the contact was in the child's best interest and the adoptive mother must provide the contact.

Matter of Keenan R. 38 AD3d 435, 831 NYS2d 320 (1st Dept. 2007)

New York County Family Court dismissed a petition by a brother who was in foster care to have visitation with his two sisters who had been adopted, ruling that the brother did not have an ongoing relationship with his sisters. On appeal, the First Department reversed and remanded the matter for another hearing. The Appellate Court found that the lower court had not considered if the brother's failure to establish a relationship had been frustrated by the adoptive parents. The court must consider what the child could have reasonably done under the circumstances. The Appellate Court clearly stated that they were not ruling that the brother should be granted visitation, only that he be provided with a hearing as to whether visitation would be in the best interests of the children.

Matter of Devin F. 41 AD3d 1197, 832 NYS2d 475 (4th Dept. 2007)

A stepmother filed to adopt her husband's child and the birth mother would not consent. The stepmother alleged that the mother had abandoned the child as she had not visited but the Fourth Department agreed with Chautauqua County Family Court that she had not abandoned the child as she was paying child support. It did not matter that the child support was paid through a wage deduction order. She was paying an amount that was in conformity with the Child Support Standards and so the court would did not entertain any argument that she was not paying a "fair and reasonable" amount.

Matter of Greene County v Ward 8 NY3d 1007, 839 NYS2d 702 (2007)

A Greene County woman adopted a child from New Jersey and thereafter surrendered the child for adoption to Greene County when she was unable to handle his severe behavioral problems. She returned the adoption subsidy payments to New Jersey. Greene County DSS then sued her for child support. She argued the exception in SSL§ 398(6)(f) that says that when a child born out of wedlock is surrendered to DSS for adoption, the parent is no longer obligated to pay child support. The mother argued that as the child had in fact been born out of wedlock and also adopted by her as a single parent, the exception should apply. She also argued that the requirement of child support would chill those interested in adopting a child with special needs. The Court of Appeals concluded that the exception was not meant to apply to post adoption situations and that she was liable for child support. Although the Chief Judge concurred in the decision, she did write a separate opinion in which she was critical that DSS had not offered the adoptive mother other options or enough assistance with the child's issues nor had they explained to her that she would have to pay child support if she did surrender the child.

NYPWA Implementation Issues with Chapters 193 and 513 of the Laws of 2007 Regarding New Mandated Reporter Laws

1. Q. Where can a local district “record” calls made to the SCR by “social services workers” that are refused?

- There is no statutory or regulatory requirement that mandated reporters maintain a record of calls to the Statewide Central Register of Child Abuse and Maltreatment (SCR) that are not accepted as reports. Accordingly, there is no legal requirement as to where such documentation should be maintained. However, despite the lack of any legal requirement to document calls to the SCR that are not accepted as reports, OCFS recommends that all mandated reporters, including local social services district staff, do so in order to document that the mandated reporter fulfilled their legal responsibility by making a call to the SCR. This documentation may be maintained by the individual mandated reporter, in agency records, or both. The district may want to create a log to record calls to the SCR that are not accepted as reports, or have individual workers maintain their own records. In either event, we recommend that districts develop a procedure for how and where this information should be recorded and maintained.

We recommend against recording such information in any case record that may exist, particularly a child protective services or other case record to which the person or family may have access.

2. Q. Have SCR employees been trained on the new laws – multiple reports coming from local districts suggest that the SCR has refused “second hand” reports from social services workers

- SCR hotline staff have received training on the changes in law and continue to receive updates on the proper interpretation of the new laws as guidance on the proper interpretation is developed by OCFS. Legal staff of OCFS have been meeting with SCR staff on these issues on a regular and recurring basis.

The SCR should be accepting all reports that provide reasonable cause to suspect abuse or maltreatment, regardless of whether the information is first hand. If a social services worker or any other mandated reporter who calls the SCR does not understand the rationale provided by the SCR staff for not accepting a report or does not agree with the rationale provided, the social services worker or other mandated reporter should be offered the opportunity to speak with a supervisor at the SCR to further discuss the matter. If the social services worker or other mandated reporter is not offered that opportunity, the social services worker or other mandated reporter should affirmatively ask to speak to a supervisor. If the supervisor also determines that a report should not be accepted and the social services worker or other mandated reporter still does not understand or agree with the rationale provided, the social services worker or other mandated reporter can ask to speak to a manager at the SCR to further discuss the matter.

3. Q. If one person calls from an institution like a school on behalf of multiple mandated reporters, how is that recorded by the SCR so that all mandated reporters are “covered”?

- Chapter 193 of the Laws of 2007 amended Section 413 of the Social Services Law (SSL) to require that a mandated reporter who makes a report must advise the SCR of the name, title and contact information for every staff member of the institution, school, agency or facility who the mandated reporter believes has direct knowledge of the alleged abuse or maltreatment. OCFS recommends that the mandated reporter making the call also advise the SCR as to which of these other persons from the same institution, school, agency or facility are also mandated reporters. That will enable the SCR to note in the report which other mandated reporters from that institution, school, agency or facility have also fulfilled their mandated reporter responsibilities. The SCR will put this information into the “Miscellaneous” section of the report. Please note that information on these additional mandated reporters will be treated as source information by the SCR and will be redacted from any copies of reports provided by the SCR to persons or entities not authorized to have access to source information.

Q. There have been reports that the SCR does not record calls as an “institutional call” and that the SCR has recently told callers that names of others with first hand knowledge at the institution are “not needed”.

- If a mandated reporter attempts to provide information on other persons from the institution, school, agency or facility with direct knowledge of the alleged abuse or maltreatment and/or other mandated reporters from the institution, school, agency or facility who have knowledge of the alleged abuse or maltreatment and the SCR staff refuses to take that information, the mandated reporter should ask to speak to a supervisor at the SCR so that the information will be taken. The SCR staff are trained to document that information.

4. Q. If only one mandated reporter calls in a report from an institution, say where other mandated reporters do not agree, how will the administrator cooperate with the report if he/she disagreed with making the report to begin with?

- Once a mandated reporter from an institution, school, agency or facility makes a report, the mandated reporter is required to immediately notify the person in charge of the institution, school, agency or facility or that person’s designee that the report was made. The person in charge or designee then becomes responsible for all subsequent administration necessitated by the report, including preparation and submission of the form DSS 2221A. Whether the person in charge or designee agrees that a report should have been made is irrelevant; once the person in charge or designee is advised by a mandated reporter that a report has been made, the person in charge or designee has a legal obligation to be certain that any and all subsequent administrative tasks necessitated by the report are completed. The person in charge or designee could do this directly or through delegation, but the legal responsibility rests with the person in charge or designee.

Q. What is contemplated in cooperating?

- Completion of all administrative tasks includes the completion and submission of the form DSS 2221A. It may also include

contacting the SCR or arranging for the SCR to be contacted with additional information. If the institution, school, agency or facility has adopted a policy under which additional mandated reporters may fulfill their mandated reporting responsibilities once one mandated reporter from the institution, school, agency or facility has made a report by advising the person in charge or designee of the information they have on the alleged abuse or maltreatment, and the person in charge or designee finds that one of the other mandated reporters has information not possessed by the initial mandated reporter who called from the institution, school, agency or facility, the person in charge or designee must contact the SCR to provide that information or arrange for the mandated reporter with the additional information to call the SCR with that information. This will most likely be accepted by the SCR as a second report.

Q. If one mandated reporter calls in but the institution is not calling in, can any other mandated reporter from the same institution also “join” in the reporting or must they call separately unless the institution calls?

- Other mandated reporters may join in the call to the SCR when the call is made by advising the mandated reporter who is making the call to the SCR that they are doing so and having the mandated reporter who is making the call advise the SCR of their names, titles and contact information as other mandated reporters who also have knowledge of the alleged abuse or maltreatment. The other mandated reporters could also join in the report after the call was made if the mandated reporter who made the call advised the SCR of their names, titles and contact information as other mandated reporters who also have knowledge of the alleged abuse or maltreatment. In that instance, we recommend that the mandated reporters discuss what each knows and what was reported so that an additional call can be made to the SCR if one of the mandated reporters has additional information that was not reported to the SCR. Of course, any of the other mandated reporters who wants to make a separate call to the SCR may do so and should do so if the mandated reporter considers it necessary or appropriate to do so for any reason.

Mandated reporters should familiarize themselves with any protocols and procedures their organization may have in place as to how this would be accomplished administratively.

Please note also that, pursuant to Chapter 193, the “institution” will not be making initial reports to the SCR. The initial report will have to come from a mandated reporter who has reasonable cause to suspect abuse or maltreatment based on direct knowledge possessed by the mandated reporter. Once the initial report has been made, the mandated reporter must notify the person in charge of the institution, school, agency or facility or that person’s designee that the report was made. The person in charge or that person’s designee may make a subsequent call to the SCR to provide additional information if the person in charge or designee is advised of additional relevant information by other mandated reporters in the institution, school, agency or facility, but Chapter 193 removed the ability of an institution, school, agency or facility to make an “institutional report” as the initial report to the SCR concerning an allegation of abuse or maltreatment.

Q. If only one mandated reporter calls it into the hotline as the others disagree and if the mandated reporter is required to provide the names of others at the institution with first hand knowledge, won't that “out” the mandated reporters who do not report and do institutions know this?

- The mandated reporter responsibility arises when a mandated reporter has reasonable cause to suspect that a child has been abused or maltreated. Different mandated reporters may legitimately have differing opinions as to whether they have reasonable cause to suspect abuse or maltreatment depending on what they know and how they know it. The question will be whether the other mandated reporters have a good faith belief that they do not have reasonable cause to suspect. Also, the mandated reporter who makes the call to the SCR will be providing information to the SCR on other persons with direct knowledge of the alleged abuse or maltreatment based on the caller’s knowledge and belief as to what those other persons know. That information may not be specific or entirely accurate in all details.

Please note also that there is no inherent legal issue with the institution, school, agency or facility knowing who on the staff has or has not made calls to the SCR. Chapter 193 of the Laws of 2007 amended Section 413 of the SSL to require that mandated reporters who make a report to the SCR advise the person in charge of the institution, school, agency or facility or that person's designee when a report has been made and of the names of the other persons in the institution, school, agency or facility believed by the mandated reporter who made the report to have knowledge of the alleged abuse or maltreatment. Accordingly, the person in charge or designee will be aware of which persons may have knowledge of the alleged abuse or maltreatment. Part of the intent of the statutory change appears to be that the institution, school, agency or facility would be made aware of who on the staff may have knowledge of the alleged abuse or maltreatment and who on the staff did and did not make calls to the SCR.

5. Q. Are there plans to offer statewide training, teleconferences whatever to schools, hospitals, mental health clinics on the new rules? Local districts are being besieged with questions and there is not continuity in the answers. Also it would be a good time to review the mandate to turn over records as there continue to be refusals to comply with that 2005 change.

- OCFS did a teleconference in November of 2007 for school administrators that addressed in part the new requirements of the mandated reporting laws as amended last year. OCFS will also be posting additional materials on the OCFS website on the new laws, including questions and answers. Questions concerning the new laws may also be referred to the Public Information Office of OCFS for response.

We would also note that a specialized teleconference is planned for late spring 2008 for local social service districts on the new laws. Also, our contract partners at the Center for Development of Human Services offers Instructor Led Workshops; Training of Trainers; and i-Linc virtual classroom offerings the first Thursday of each month. Please visit the Mandated Reporter Website at www.nysmandatedreporter.org/ to register and for

additional information or resources. This training is at no cost to the participant.

6. Q. Are there plans to review the process to handle “duplicate” reports – there are likely to be many more reports on a family now and the SCR does not seem to “dup” or “merge” anywhere near enough and it can be a time issue for local districts – also the time frames to allow for “dup” or “merge” should be increased.

- Even where organizations develop procedures whereby one mandated reporter may make a report on behalf of all of the mandated reporters in the organization, we agree that it is very likely that the number of reports based on a particular allegation of child abuse or maltreatment will increase. The SCR will classify as a “duplicate” report another report that contains no new information beyond the initial report. Duplicate reports are automatically merged by the SCR into the initial report and no further action is required by the local district. However, this will occur only where the second report contains no new subject, no other abused or maltreated child, and no new allegations. If the subsequent report contains any such information beyond what was included in the first report, the second report will be treated by the SCR as a subsequent report and not as a duplicate.

Where the SCR transmits two or more reports to the local child protective service (CPS) concerning the same family within a short time frame (specifically, within 59 days of the original report), the local CPS may decide, upon review of the initial and subsequent reports and in light of the investigation conducted to that point, that the subsequent report(s) should be consolidated into the initial report. Consolidating reports is an action that is done on the local level, and the local CPS has the discretion to consolidate reports as they deem appropriate within the 59 day time frame from receipt of the initial report. The decision whether to consolidate reports that have differing information is one that should be made on the local level taking into account the information possessed by the local CPS; it is not a decision that can appropriately be made by the SCR at the point of intake.

7. Q. Is there going to be any further definition of “social services workers” as contract agencies are confused – this is causing a lot of tension.

- On December 13, 2007, OCFS issued 07-OCFS-ADM-15, which includes the OCFS understanding of who is included in the term “social services worker” for mandated reporting purposes. The list is as follows:

- A. Professional and paraprofessional staff of local social services districts. This would include not only child welfare staff but all professional and paraprofessional local district staff, regardless of their function or area of responsibility, who provide services to children and/or families. It would, for example, include Medicaid staff, public assistance staff and adult protective services workers.
- B. Professional and paraprofessional staff that provide services to children and/or families and who work for organizations or entities that have contracts with local social services districts to provide services related to foster care, adoption or preventive services. It would also apply to individuals who have contracts or subcontracts with the district to supply professional or paraprofessional services related to foster care, adoption or preventive services.
- C. OCFS regional office staff that have responsibilities for inspections or investigation of complaints at residential facilities and day care programs, other than those staff whose sole responsibility is to inspect facilities and investigate complaints related to physical plant or building safety issues.

This leads to the question of who would be considered professional and paraprofessional staff. Professional staff would be those staff who engage in an activity which requires some amount of advanced learning, education or training, and paraprofessional staff would be trained aides who provide support and assistance to

professionals in carrying out the professional functions of the professional person.

Due to the multiplicity of functions, positions and position titles used by local districts and contractors, we have not attempted to develop a comprehensive list of which functions and titles would be considered mandated reporters and which would not be. However, as a general proposition, we would consider any position for which a college degree is required to be generally classified as a professional and thus to be a mandated reporter. We would consider those staff whose responsibilities include providing or arranging the provision of services to clients to be mandated reporters. We would consider those who are involved in making eligibility determinations to be mandated reporters. The staff who supervise the staff involved in such activities and the management of the district or contract agency would be mandated reporters.

We would not consider the term “social services worker” to include secretaries, clerical staff, or janitorial or maintenance staff. Staff with those sorts of responsibilities would not be mandated reporters.

We would encourage social services districts to determine on a local level within the guidance suggested above who among their staff would be considered mandated reporters and to disseminate such guidance on a local level. We would also encourage social services districts to determine which staff among their contractors and subcontractors would be considered mandated reporters and to include such requirements in their contracts. Where districts have questions about which staff and/or contractors should be considered mandated reporters, please contact the House Counsel bureau of the OCFS Division of Legal Affairs for assistance.

8. Q. Are DSS lawyers or any lawyers doing DSS work – say on a contract basis – now seen as “social services workers” by OCFS interpretation? If so, they do not currently receive mandated reporter training.

- We would consider lawyers working for a social services district to be professionals employed by the district; they would thus

be social services workers and, as such, mandated reporters. If a lawyer had a contract to provide legal services related to foster care, preventive services or adoption services, the lawyer would also be a social services worker (and thus a mandated reporter) in that role.

We encourage social services districts to obtain mandated reporter training for any district staff and contract staff who are mandated reporters where such staff may not have previously received mandated reporter training or where refresher training may be appropriate. A specialized teleconference is planned for late spring 2008 for local social service districts on the new mandated reporter laws. Also, social services districts can request Instructor Led Workshops, Training of Trainers sessions and/or i-Linc Virtual classroom course provided by our contract partner at the Center for Development of Human Services via the website at www.nysmandatedreporter.org/

9. Q. When is the logical “end” of a social services worker’s requirement to report second hand info – when an investigation has already begun? When the worker is aware that another mandated reporter has called a report in – perhaps as it was done in the worker’s presence?

- First, the mandated reporter responsibility does not come into play if the information provided is actually second hand. Chapter 513 of the Laws of 2007 requires social services workers to make a report when a person comes before them in the social services worker’s official or professional capacity and states “from personal knowledge” information which, if correct, would mean that a child was abused or maltreated. If the person coming before the social services worker has only second hand knowledge of the alleged abuse or maltreatment (for example, if the person coming before the social services worker advises the social services worker of something that a third person told the person before the social services worker), the mandated reporter responsibility does not come into play.

If the second hand information gives the social services worker reasonable cause to suspect that a child may have been

abused or maltreated, the social services worker may call the SCR, and we would certainly encourage the social services worker to call the SCR anytime the worker believes that he or she has reasonable cause to suspect, regardless of the ultimate source of the information. However, the mandated reporter responsibility only comes into play from a strict legal perspective when the person before the social services worker has personal knowledge of the alleged abuse or maltreatment.

Chapter 193 of the Laws of 2007 amended the mandated reporting statute to remove the ability of mandated reporters employed by an organization to fulfill the mandated reporting responsibility by advising the person in charge of an organization or that person's designee of the need to make a report and having the person in charge or designee make the report on the mandated reporter's behalf. Under the law as amended by Chapter 193, at least one mandated reporter who has reasonable cause to suspect must make a report to the SCR. If a social services worker or any other mandated reporter employed in an organization that employs multiple mandated reporters is aware that another mandated reporter in the same organization (e.g., in the same local department of social services or in the same service provider agency) has made a report to the SCR on the alleged abuse or maltreatment at issue, and the social services worker has no additional information beyond what the first mandated reporter told the SCR, the second mandated reporter need not make a separate report to the SCR. Mandated reporters should familiarize themselves with their organization's procedure or protocol for making reports in such situations. Further guidance on this topic is available in 08-OCFS-INF-01.

Once an investigation has commenced, a social services worker would not be required to make a report to the SCR concerning the allegations of abuse and/or maltreatment that are being investigated. However, if a social services worker then has a person come before the social services worker in the social services worker's official or professional capacity and state from personal knowledge information which provides reasonable cause to suspect an additional allegation or allegations of abuse or maltreatment, the

social services worker would be required to make a report concerning the new allegation(s).

10. Q. What exactly is meant by “professional or official capacity”? Does the person have to come before the social services worker as part of the worker’s caseload or job description or can any person come before the worker as long as the worker is on the job? What if someone gives info to a worker who is not at work but the person gives the info to the worker as the informant knows the person is a worker?

- The term “professional or official capacity” refers to any time that a person is acting within the scope of their employment or carrying out functions as part of the duties and responsibilities of their profession. For a social services worker, it would include any time that the person is on the job; it would not be limited to dealing with persons who are officially part of the worker’s caseload.

If a second person were to give information to a social services worker outside of work based on the second person’s knowledge that the person receiving the information is a social services worker and the second person is providing that information to the social services worker in what such person reasonably believes is the social services worker’s professional capacity, we would consider that to be information provided to the social services worker in the social services worker’s official capacity.

11. Q. Often mandated reporters will call local workers that they know personally to “run something past” the worker and will detail a child’s situation, seeking some input – this often occurs where the mandated reporter will not share the name of the family – should social services worker refuse these calls now? They will hear second hand info that might make them reasonably suspicious but be unable to call it in as no name is given. Should a worker “cover” themselves by calling in anything that makes them suspicious even if they do not have the name of the possible subject family?

- There is no reason under Xctasy’s Law to refuse to discuss or consult on situations that potentially involve abuse or maltreatment of children where someone calls a local district worker to discuss

whether the situation might rise to the level of requiring a report to the SCR. It is possible that such a discussion might give the social services worker reasonable cause to suspect abuse or maltreatment, in which case the social services worker must make a call to the SCR. However, that possibility is not a good reason to refuse to consult with persons on situations that may potentially involve abuse or maltreatment. The goal of the mandated reporting law continues to be that persons with reasonable cause to suspect that a child is being abused or maltreated should report that information to the SCR. The changes in the law are not a rationale to try to avoid having to make reports.

If, however, the person consulting with the social services worker does not give the social services worker enough information to make it possible for the social services worker to actually make a report, then the social services worker would not be obligated to make a report. In the example given, where the person consulting with the social services worker does not identify the family at issue, there is no point to making a call to the SCR unless the social services worker has information that would provide some way to identify or potentially identify the family.

This does not mean that a mandated reporter must have exact and precise identifying information for every member of the family before the obligation to make a report arises. However, there must be some information that would realistically enable the local CPS to either determine the identity of or locate the child or family at issue in order for the SCR to register a report. If a mandated reporter believes that there is reasonable cause to suspect that a child is being abused or maltreated and is uncertain whether he or she has enough identifying information, we encourage the mandated reporter to call the SCR and discuss the matter with them.

12. Q. What if the info comes in via letters or phone calls – does that mean the person “came before them” – why do we use that weird phrase anyway?

- The intent behind the phrase “comes before them” is to include any form of interaction a mandated reporter might have with a child, family or, for social services workers, any person. In

addition to personal contact, it includes information received by letter, by telephone, or any form of electronic communication.

13. Q. Is the worker obligated to ascertain if the informant has in fact personal knowledge? What if they won't tell you if they do? What if you think it may be based on the informant's personal knowledge so the worker calls it in, but it was just some false third or fourth hand gossip – would the worker be subject to a possible law suit under the argument that SSL 413 does not cover calling in beyond the required calling?

- The social services worker is not obligated to ascertain whether the person who has come before the social services worker actually has personal knowledge. If in having a discussion with the person, the social services worker becomes aware that the person's knowledge of the alleged abuse or maltreatment is not direct, then the social services worker is not in a mandated reporter situation. However, if the social services worker has reasonable cause to suspect abuse or maltreatment even though they are not legally obligated to make a report, we strongly encourage the social services worker to make the call to the SCR anyway.

Section 419 of the SSL provides immunity from civil and criminal liability to mandated reporters who make reports to the SCR in good faith. This applies to all reports, regardless of whether a social services worker was mandated to report. Therefore, for liability purposes, the important issue is not whether the report was based on the direct knowledge of the reporter or source of the report, or whether the information ultimately proved to be accurate; the issue is whether the social services worker made the report in good faith. Section 419 of the SSL further provides that good faith is presumed where the mandated reporter was acting in discharge of the mandated reporter's duties and within the scope of employment. To overcome the presumption of good faith, there would have to be a showing of willful misconduct or gross negligence. Accordingly, a social services worker who, while acting in his or her official or professional capacity, receives information from another person that provides reasonable cause to suspect that a child has been abused or maltreated and who makes a report based on that information should not be concerned about potential

liability, regardless of whether the information ultimately proves to be accurate or inaccurate.

14. Q. Once the social services worker calls in a second hand report based on info from a mandated reporter, how can they document that they have advised the mandated reporter that they need to call in the report as well and that the worker calling in the report does not suffice for them to fulfill their own mandate to report? Can there be a state letter composed that would provide that information to the mandated reporter?

Again, where a social services worker speaks to another mandated reporter who does not him or herself have personal knowledge of the alleged abuse or maltreatment (i.e., the other mandated reporter has only second hand information), the mandated reporter responsibility does not arise for either the social services worker or the other mandated reporter. Where a social services worker receives information from another mandated reporter based on the other mandated reporter's personal knowledge that gives the social services worker reasonable cause to suspect abuse or maltreatment, the social services worker is obligated to make a report. If the other mandated reporter's information is based on interaction with the child or the child's parent, guardian or other person legally responsible for the child, the other mandated reporter would also be obligated to make a report.

If after the discussion or other communication between the social services worker and the other mandated reporter, the social services worker and the other mandated reporter have basically the same information about the alleged abuse or maltreatment, only one would be required to make a report to the SCR. In that situation, the mandated reporters should decide between themselves who will make the report.

If the social services worker and other mandated reporter have different information, both would be obligated to make a report. We recommend that social services workers in that situation remind the other mandated reporter that the latter is also obligated to make a report, and maintain a record documenting that communication.

This information could be included in the form DSS 2221A or in any other record that the social services worker maintains to document that a call was made to the SCR. We recommend against recording this information in the case record or progress notes, however, as this would compromise the confidentiality of source information if the subject of the report or other persons named in the report obtained access to the CPS record. We do not see the need for a State letter for that purpose.

15. Q. School districts are telling people that the new law was designed to keep teachers in the classroom and “shorten” the time that someone was on the phone to the SCR by allowing persons who know nothing first hand to call in the report to cover everyone else. Can OCFS make it clear that the vast preference for a phone call is from someone who actually has some first hand knowledge of the problems? At least can this “purpose of the law is to shorten time on the phone to SCR” stuff be nipped in the bud?

- Chapter 193 of the Laws of 2007 in fact changed the mandated reporting law to remove the ability of mandated reporters employed by a school to fulfill the mandated reporting responsibility by advising the person in charge of the school or that person’s designee of the need to make a report and having the person in charge or designee make the report on the mandated reporter’s behalf. Under the law as amended by Chapter 193, at least one mandated reporter who has reasonable cause to suspect abuse or maltreatment must make a report to the SCR. Therefore, there is more than just a preference for the call to come from a mandated reporter who has him or herself developed reasonable cause to suspect abuse or maltreatment; it is now legally required. One specific purpose of Chapter 193 was that reports to the SCR be made by an individual who is a mandated reporter rather than by an agent who does not have any direct knowledge of the alleged abuse or maltreatment.

The law as amended does provide that the person in charge of an organization or that person’s designee is responsible for all administrative follow-up necessitated by the report, which presumably represents an attempt by the legislature to shorten the time spent by mandated reporters, including teachers, in doing the

administrative follow-up resulting from making calls to the SCR. But we are not aware of any intent or belief by the legislature that the changes to the mandated reporting law would shorten the time that mandated reporters spend on the telephone with the SCR. In fact, by adding the requirement that mandated reporters also advise the SCR of the names, titles and contact information for every staff person in the organization who is believed to also have direct knowledge of the alleged abuse or maltreatment, the legislature would appear to have actually envisioned mandated reporters spending a bit more time on the phone with the SCR.

OCFS interprets the changes to the mandated reporter law made by Chapter 193 of the Laws of 2007 to not necessarily require that every mandated reporter in an organization make a separate call to the SCR. Where one mandated reporter makes a call to the SCR, the report is accepted, other mandated reporters in the organization know the report has been made, and the other mandated reporters have no additional information to add to what was reported by the first mandated reporter, OCFS does not believe the new law requires that each of the other mandated reporters in the same organization must make duplicative reports to the SCR. It is possible that this is the point schools are trying to get at in this discussion.

OCFS will provide a copy of Chapter 193 and information on our interpretation of the new requirements to the New York State School Boards Association with a request that they provide this information to their members.

16. Q. Not related to the new law, but in discussing this issues, any number of people have complained that some SCR staff did not speak English clearly enough and that this results in much longer phone calls and misunderstandings and miscommunication.

- If there is a communication concern regarding an SCR staff person, the caller should ask to speak with a supervisor. A supervisor is on site at all times and can assist in addressing communication issues.

Section 8.3C.2c TITLE IV-VE, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

Question: In what way can a State meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(ii) of the Social Security Act (the Act)?

Answer: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(ii) of the Act tasks the State with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the State with some discretion in determining how it will comply with the requirement.

We do not interpret the term ‘consult’ to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child’s views on the child’s permanency or transition plan must be obtained by the court for consideration during the hearing. For example, a report to the court in preparation for a permanency hearing that clearly identifies the child’s views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child’s views to the court could also meet the requirement. Information that is provided to the court regarding the child’s best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child’s views on his/her permanency or transition plan.

- **Source/Date:** (date of approval)
- **Legal and Related References:** Social Security Act – section 475(5)(C)(ii)

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