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November 24, 2009

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**Re: Standards for the Provision of Adolescent Services for Foster Care  
Youth I.D.No. CFS-41-09-00008-P**

Dear Sir or Madam:

The New York City Bar Association is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The Council on Children of the Association (the "Council") is a diverse group of legal professionals working on behalf of children. The Council writes to comment on proposed rule No. CFS-41-09-00008-P. The proposed rule would amend sections 421.8, 430.12 and 447.2; and add Part 436 to Title 18 N.Y.C.R.R.

We appreciate the salutary objectives of securing permanency for children in foster care, finalizing permanency plans for children whose goal is another planned living arrangement with a permanency resource (APPLA), and ensuring adequate and appropriate supervision for young people who are discharged to APPLA. However, we are concerned that some of the proposed changes actually undermine those goals and will lead to an increase in the numbers of young people in our State who transition from foster care to homelessness.

The Council is cognizant of the fact that the overall scheme of the proposed changes is to ensure that New York State is eligible to receive federal Chafee Program funding to support programs and services designed to assist young people leaving foster care to live independently. Some of the provisions of proposed section 436 further those goals, and should lead to improvements in services for children leaving foster care to APPLA. For example, proposed section 436 includes provisions requiring that (1) a young person age 18 to 21 be provided notice 180 days prior to her planned discharge date; and (2) a social services district document all of its efforts to prepare a young person for discharge in detail. In addition, proposed section 436 would require social services districts to continuously explore permanency alternatives for all youth in care over age 14, including youth who have previously refused adoption.

Beyond meeting the federal Chafee Program requirements, New York State must also meet the requirements set out in *Palmer v. Cuomo*, 121 A.D.2d 194, 503 N.Y.S.2d 20 (1st Dept.

1986). In that case, the Appellate Division, First Department, interpreting the New York State Constitution and Social Services Law, held that the City and State of New York were required to ensure that young people leaving the foster care system after turning 18 had their basic needs met, including appropriate housing outside the shelter system. To ensure adequate supervision of discharged youth until age 21, the court directed the State to promulgate clear regulations outlining required casework contacts with youth following discharge.

We are extremely concerned that several provisions of the proposed regulatory changes would eliminate critical protections identified in *Palmer*. The result, for young people leaving foster care to live on their own, could be catastrophic.

First, the proposed amendments would replace the detailed guidance 18 N.Y.C.R.R. § 430.12(f) provides to local social services districts relating to what services must be provided to young people whose plan is to be discharged to APPLA with general language about providing life skills. Without specific guidance about appropriate services such as housing and educational assistance, the quality and efficacy of services designed to assist youth in transitioning to independence may diminish. Moreover, by leaving it up to local districts to decide what services will be provided in their consolidated services plan, the proposed amendments will likely result in great disparities in breadth and quality of services provided to young people in foster care across the state.


Second, the proposed amendments similarly reduce the requirements for post-discharge supervision to unacceptable generalities. Currently, 18 N.Y.C.R.R. § 430.12(f)(4)(b) sets forth specific guidance about what casework contacts must be made with a youth who has been discharged to APPLA, and requires detailed documentation of all casework contacts in the case record. Proposed section 436, on the other hand, fails to set forth even a minimum number of required casework contacts with youth discharged to APPLA. This lack of specificity diminishes the likelihood that casework contact will be adequate to address problems as they arise for youth who have been discharged to APPLA, increasing the likelihood that those problems will have devastating consequences.

Third, the proposed rule would amend 18 N.Y.C.R.R. § 430.12(f)(4)(i)(a) to give local social services districts the discretion to refuse to accept a young person back into foster care if he or she becomes homeless while on trial discharge. When a youth is on trial discharge, he remains in the legal custody of the local commissioner. Consistent with that relationship, the current regulation requires the local commissioner to take a young person back into care if he becomes homeless. By making that decision discretionary, the proposed amendment would leave many young people dependent on the shelter system, moving them from one dependency to another. Particularly during an economic crisis, local districts may be unable to resist the temptation to exercise this discretion to relinquish responsibility for the very young people who are having the greatest difficulty living independently.

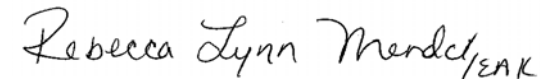
Finally, the proposed amendments would eliminate the prohibition in 18 N.Y.C.R.R. § 430.12(f)(3)(i)(c) against discharging a young person to a homeless shelter. The proposed amendment's prescription that young people be discharged to "safe and stable housing," is inadequate to ensure that social services districts are meeting their obligations under *Palmer, supra*. Without an explicit prohibition against discharge to a shelter, local districts will have less incentive to make their greatest efforts to ensure that youth move from foster care to housing that is truly stable, which will facilitate their transition to independence.

We applaud the NYS Office of Children and Family Services for its effort to improve its regulations to ensure the quality of services provided to youth leaving foster care and transitioning to independent living, and to maximize the State's ability to utilize federal funding to support those youth. However, we urge OCFS to reconsider its proposal and retain the critical regulatory provisions that hold local social services districts accountable in a meaningful way for the success of the young people in their care.

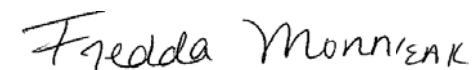
Sincerely,

Handwritten signature of Karen J. Freedman in cursive, with the initials 'EAK' written at the end.

Karen J. Freedman  
Chair, Council on Children

Handwritten signature of Rebecca Lynn Mendel in cursive, with the initials 'EAK' written at the end.

Rebecca Lynn Mendel  
Chair, Family Court and Family Law Committee

Handwritten signature of Fredda Monn in cursive, with the initials 'EAK' written at the end.

Fredda Monn  
Chair, Children and the Law Committee

Cc: Hon. Gladys Carrión  
Commissioner, Office of Children & Family Services