

Comments on Proposed Amendment of 18 N.Y.C.R.R. § 444.1 and addition of 18 N.Y.C.R.R. §§ 444.2-444.15 relating to Host Family Homes

COMMITTEE ON CHILDREN AND THE LAW

Children # 22

May 11, 2020

The Committee on Children and the Law strongly opposes the proposed regulations because they violate the statutory and constitutional rights of children, threaten to cause great emotional harm to young people, and may have a significant fiscal impact upon New York State.

The Proposed Regulations Would Violate the Statutory Provisions Regarding Placement with an Authorized Agency

New York statutes (S.S.L. §§ 384-a and 358-a) have long provided for parents to voluntarily place their children with strangers through an authorized agency. Those statutes require that such placement be approved by a family court to ensure that the parent knowingly and voluntarily placed the child, that services were offered to the family to prevent the child's placement, and that all appropriate family resources were explored in order to prevent the child's placement with strangers. The statutes further require that the child's placement be regularly reviewed by the family court in ensure that all of the child's needs are being met, that services are being offered to the family to effectuate the child's return, and that efforts are being made to achieve an alternative permanency goal when return home is not a viable option.

New York has required judicial approval of the voluntary placement of children in foster care and regular review of the status of the children's placement in order to ensure that children are not unnecessarily removed from their homes, and to ensure that they achieve permanency as quickly as possible. Before the statutes provided for regular judicial review, thousands of children were left to languish indefinitely in temporary foster care placements with little effort made to move them into permanent home situations, whether through adoption or return to their biological family. "It was thought that mandating judicial review at regular intervals would ensure that no child would 'fall between the cracks' and that the need for permanency planning for *every* child would no longer be neglected [citations omitted]".¹

¹ *Matter of Tyriek W. et. al.*, 85 N.Y.2d 774 (1995).

These proposed regulations would impermissibly upend that statutory scheme for the voluntary placement of children. They would create a scheme that contravenes both the letter and the spirit of the statutes governing the voluntary placement of children in a home with strangers through an authorized agency. We submit that such a scheme would not withstand judicial scrutiny.

The Proposed Regulations Would Violate the Due Process Rights of Children

The proposed regulations deprive children of statutory entitlements without due process of law. New York Statutes provide that children have the right to be represented by counsel and the right to be heard in court when their parents seek to voluntarily place them in strangers' homes under the auspices of an authorized agency. Once placed, they have the statutory right to be heard at a permanency hearing held every six months regarding the necessity for ongoing placement, the right to remain in their school of origin, and the right to receive assistance in getting to that school. They also have the statutory right to receive supportive services that will enable the family to be reunited as soon as possible. Youth who turn 18 years of age while still placed out of their homes through an authorized agency have the right to remain in placement for an additional three years, the right to receive services (such as ETVs) to assist them in preparing for independent living, and the right to return to the care of an authorized agency up until age 21 if they are unable to live on their own.

The rights of children who are voluntarily placed with authorized agencies to be represented by counsel throughout their placement and to have access to the courts to enforce all of their statutory rights related to the placement are crucial to ensuring their safety and well-being.

Children who are placed through Host Homes would be stripped of these and other statutory entitlements. Because the proposed regulations would create a framework that would deprive children removed from their homes of those statutory rights without due process of law, they should not be promulgated, and are unlikely to withstand scrutiny if challenged in court.

The Proposed Regulations Threaten Grave Emotional Harm to Children

There is no shortage of information documenting the harm done to children who are removed from their families and placed with strangers. State and Federal Statutes governing the placement of children in foster care aim to minimize that harm by requiring that preventive services be offered, that diligent efforts be made to reunite the family as quickly as possible, that siblings be placed together, and that children remain in their school of origin. By creating a regulatory scheme that circumvents these requirements, these proposed regulations threaten to cause grave lasting trauma to children.

The Proposed Regulations Would Have Significant Fiscal Implications for the State

These regulations would provide for placement of children only until age 18, although it is widely known that most young people in foster care are not prepared to live on their own at that time. Youth who leave out of home care at age 18 are significantly less likely to have completed high school, to be employed and to have permanent shelter than their peers, and are significantly more likely to be parents, themselves. These youth are disproportionately represented in the shelter system and the criminal justice system. They are also significantly more likely to rely on public benefits, such as cash assistance and SNAP, than are their peers and youth who are permitted to remain in foster care with services and supports until age 21. Each of these outcomes comes with a significant cost to New York State that should not be ignored.

The Proposed Host Homes Scheme Does Not Fall Within Parents' Right to Make Custodial Arrangements for Their Children

Although parents may generally make whatever appropriate arrangements they wish for their children to reside with family members or friends for a short period of time, the Host Homes program created by the proposed regulations would not fall within the exercise of that right. Placing a child with an authorized agency, in the home of strangers is voluntary foster care – whether or not the foster parent is being paid. OCFS should shirk its responsibility to oversee those placements and cannot authorize those placements in violation of the statutory protections afforded to children who are voluntarily placed in foster care.

New York has a clear statutory framework for protecting the due process rights of children, keeping them with their families whenever possible, and placing them with kinship resources when they cannot stay safely in their own homes. These regulations would turn the clock back to a time when children were taken from their homes with no right to be heard, parents were separated from their children without judicial oversight, and children languished in the homes of strangers for years on end with no efforts being made toward either reunification or permanency.

Based on the forgoing, the Committee on Children and the Law OPPOSES these proposed regulations.