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Commissioner

### Administrative Directive

<b>Transmittal:</b>	09-OCFS-ADM-07
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Division of Legal Affairs
<b>Date:</b>	March 20, 2009
<b>Subject:</b>	<b>Recognition of Legal Same-Sex Marriages</b>
<b>Suggested Distribution:</b>	Directors of Services Foster and Adoptive Licensing/Approving Staff Child Protective Services Supervisors Child Welfare Supervisors Staff Development Coordinators CONNECTIONS Implementation Coordinators Domestic Violence Programs Detention Programs Runaway and Homeless Youth Programs
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<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	No

#### I. Purpose

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSS), voluntary authorized agencies, and other service providers of the implications of the February 1, 2008, decision of the New York State Supreme Court, Appellate Division, Fourth Department, *Martinez v. County of Monroe*, 50 A.D.3d 189 (4th Dep't 2008). The Court held that same-sex marriages legally performed in other jurisdictions are "entitled to recognition in New York in the absence of express legislation to the contrary" (*Martinez*, 50 A.D.3d at 193).

The *Martinez* decision is consistent with other state court decisions such as *Godfrey v. Spano*, 15 Misc. 3d 809 (Sup. Ct. Westchester County 2007) and *Funderburke v. N.Y. State Dep't of Civil Service*, 49 A.D.3d 809 (2d Dep't 2008). In addition, the extension of such recognition is also consistent with State policy. For example, in April 2007, the Department of Civil Service extended recognition to same-sex spouses in legal marriages from other jurisdictions for purposes of spousal benefits under the New York State Health Insurance Program.

Accordingly, the Governor's Office has required state agencies to review their policies and interpretations of relevant statutes and regulations, and construe marriage-related terms in a manner that recognizes legal same-sex marriages, unless prohibited by another provision of law.

## **II. Background**

Various provisions of the Domestic Relations Law (DRL), Family Court Act (FCA), Social Services Law (SSL), and regulations of the Commissioner of the Office of Children and Family Services (OCFS) contain words such as marriage, married, spouse, husband and wife. Such statutory and regulatory language must be interpreted to include legal same-sex marriages and spouses, as appropriate. Currently, same-sex marriages are legally performed in Canada, South Africa, Spain, Belgium, the Netherlands, Connecticut, and Massachusetts. Same-sex marriages were legally performed in California from May 15, 2008, until November 4, 2008.

## **III. Program Implications**

There are numerous statutory and regulatory provisions that refer to a person's marital status and use gender-specific words for parents and spouses. These provisions must be interpreted to recognize both spouses in same-sex marriages legally performed in another country or state. Additionally, current OCFS policies must be interpreted to recognize same-sex marriages legally performed in other jurisdictions.

For example, the statutory and regulatory provisions related to adoptions and eligibility for adoption subsidies that refer to "husband," "wife," "married couples," and "spouses" must be interpreted to include same-sex spouses and couples in marriages that have been legally performed in another jurisdiction.

Similarly, the statutory and regulatory provisions involving certification and approval of foster parents, or the operators of other residential programs, that reference married individuals and spouses must now be interpreted to include same-sex couples and spouses who have been legally married in another country or state.

LDSS, voluntary agencies, and service providers also need to be particularly vigilant about this issue when determining eligibility for, providing, and administering child welfare, child care, adult protective, and domestic violence services. Proof of a legal marriage performed in another jurisdiction would include a marriage certificate from that jurisdiction.

Finally, as forms are updated, gender-specific terms such as “mother” and “father” or “husband” and “wife” should be replaced by gender-neutral terms such as “parent” or “spouse” in recognition of same-sex persons who are legally married.

#### **IV. Systems Implications**

The changes reflected in this directive are generally supported in CONNECTIONS and CCRS. If problems are identified that may require a work around, please contact the Applications HELP Unit at: "ocfs.sm.connections\_app\_help" mailbox. Note, the changes are not presently supported in the CONNECTIONS health module and will require modifications of that functionality at a future date.

#### **V. Effective Date**

This ADM is effective immediately.

*/s/ Karen Walker Bryce*

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**Issued By:**

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Division/Office: Division of Legal Affairs