

+-----+
 | ADMINISTRATIVE DIRECTIVE |
 +-----+

TRANSMITTAL: 90 ADM-37

TO: Commissioners of
 Social Services
 Directors of Voluntary
 Child Care Agencies

DIVISION: Family and
 Children
 Services

DATE: October 18, 1990

SUBJECT: Foster Care: Visitation Rights of Non-Custodial Parents and
 Grandparents to Foster Children

SUGGESTED DISTRIBUTION: Directors of Services
 Staff Development Coordinators

CONTACT PERSON: Your Regional Office Director

Albany: John O'Connor, (518) 432-2751
 Buffalo: Linda Brown, (716) 847-3145
 Metropolitan: Fred Cantlo, (212) 804-1202
 Rochester: Linda Kurtz, (716) 238-8200
 Syracuse: Jack Klump, (315) 428-3235

ATTACHMENTS: I. Inquiry Concerning Visitation, State Central
 Register Clearance Form DSS 4190 (Not available on-
 line)
 II. Instructions, State Central Register
 Clearance Form DSS 4190 (Not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref. SSL 358-a SSL 384-a	Manual Ref.	Misc. Ref.
80 ADM-65		428.6	SSL 398		
86 INF-3		430.11	FCA 262		
		430.12	FCA 651		
		431.9	FCA 1030		
		431.13	FCA 1035		
		431.14	FCA 1081		
		432	FCA 1082		
			FCA 1083		
			FCA 1084		
			DRL 70		
			DRL 72		
			DRL 240		

I. Purpose

The purpose of this directive is to inform you of procedures for determining and enforcing visitation rights of non-custodial parents and grandparents of children placed in foster care, as established by Chapter 457 of the Laws of 1988. The directive describes required agency actions for compliance with the Chapter 457 amendments to the Social Services Law, Domestic Relations Law, and the Family Court Act. It includes the provisions in these amendments for petitioning the court for visitation rights; the right of social services officials to oppose such visitation if the child's life or health would be endangered; the requirement to screen petitioners for visitation rights with the State Central Register of Child Abuse and Maltreatment; and the allowance for alternative visitation schedules based on change of circumstances and/or on the best interests of the child.

II. Background

A consistent tenet of child welfare services law in recent years is the desirability for a child to remain with, and be returned to, the biological family whenever possible. Chapter 457 of the Laws of 1988 reflects this interest in promoting social services policies that preserve and strengthen family life. Therefore, maintaining contacts between a child and a non-custodial parent or grandparent is to be encouraged by establishing these procedures.

In recent years various provisions of the Domestic Relations Law and the Family Court Act have authorized the Supreme Court or Family Court to establish the right of visitation to a child by a non-custodial parent or grandparent who petitions for that right. The Supreme Court in a matrimonial action can issue an order providing reasonable visitation rights to the non-custodial parent and/or the maternal and/or paternal grandparents of a child. Domestic Relations Law enables a grandparent to apply to the Supreme Court through a special proceeding or by a writ of habeas corpus for visitation rights with a grandchild. The Family Court can also authorize visitation of grandchildren. Procedures are in place for the parties to an annulment, separation or divorce to enter into a valid and enforceable agreement which includes custody and visitation of any child of the parties.

Although these provisions exist, there have been no clear procedures to enforce questioned or disputed visitation rights if the child is placed in foster care, whether voluntarily by the custodial parent or through a court order. The new law establishes such procedures.

Visitation rights of the custodial parent(s) in cases of voluntary placement of a child into foster care are protected by Section 431.14 of Department regulations. Guidelines addressing situations in which such rights may be limited or terminated were provided in an Administrative Directive (80 ADM-65) issued August 25, 1980. The right of the custodial parent to visit the child may not be limited or terminated except "to prevent imminent danger to the child's life, health, and safety," or by written agreement with the parent or guardian, or through a court order.

In the past a social services district placing a child in foster care focused attention on maintaining contact with the custodial parent. The interests of the non-custodial parent or the child's grandparents were not always recognized. While in many cases visitation does not become a legal or services issue, this law assures enforcement of visitation rights already granted by court orders or custody agreements to non-custodial parents and grandparents. Previously there was no means to enforce such rights if they were challenged. At the same time, if the court is provided with "competent, relevant and material evidence" that enforcement of such visitation rights would endanger the child's life or health, the court must deny such visitation.

III. Program Implications

- A. With the implementation of Chapter 457 of the Laws of 1988, procedures will assure that non-custodial parents and grandparents receive equitable treatment in the granting and enforcement of court-ordered right of visitation to a child placed in foster care. Whether the foster care placement is voluntary or court-ordered, the non-custodial parent (or step-parent) and both maternal and paternal grandparents (or step-grandparents) of the child have the right to expect that any visitation rights previously granted or ordered by the court will be enforced by the agency responsible for the child's care. Each authorized agency is responsible for informing foster homes or institutions under its jurisdiction of the existence of such rights.
- B. If visitation rights or privileges have not been established prior to the child's placement in foster care or are questioned by any of the parties involved, the non-custodial parent or grandparent may petition the Family Court or Supreme Court for an order granting such rights. The parent and grandparents are entitled to assignment of an attorney as necessary to represent them before the court on this matter.
- C. Inquiry must be made by the local social services department to the State Central Register of Child Abuse and Maltreatment (SCR) in all cases when there is an issue concerning enforcement or granting of judicially-ordered visitation rights. If the SCR response is positive, and the non-custodial parent or grandparent

is the subject or another person named in an indicated report, it is the social services district's responsibility to make an assessment as to whether visitation by the non-custodial parent or grandparent to the child in foster care would endanger the life or health of the child, and whether visitation would be in the best interests of the child.

- D. Chapter 457 provides the respondent (i.e., the person who allegedly abused or neglected the child) in a child protective proceeding with the right to reasonable and regularly scheduled visitation with a child who has been temporarily placed with a social services official unless visitation is limited by an order of the Family Court. No such right previously existed.

By specifically granting a respondent in a child protective case visitation rights with a child who has been temporarily removed from the home, the law intends to ensure that the child maintains contact with his or her parent and that the child's return home is facilitated whenever possible. However, the law permits the court to deny visitation rights if the court finds that the child's life or health would be endangered.

Thus the custodial parent who becomes a respondent must be granted reasonable visitation with the child placed in foster care unless it is determined that visitation would endanger the life or health of the child. If the right of visitation is challenged, the respondent may appeal to the court for an order granting visitation at stated intervals. The court may also grant visitation under the supervision of an employee of the local social services department, if that would be in the best interests of the child.

- E. If the child is permitted to leave the foster care placement for visitation with his or her custodial parent, non-custodial parent or grandparent, the social services department or, by delegation of authority, the voluntary child-caring agency, is responsible for the child's safe return to the foster care placement.
- F. If the social services commissioner determines after a careful assessment that visitation would be harmful to the child or contrary to the child's best interests, the commissioner may petition the court:
1. to deny visitation rights; or
 2. to modify visitation rights; or

3. to permit visitation only under the supervision of an employee of the local department of social services.

- G. A petition to modify visitation rights or to approve an alternative schedule of visitation may be made by the social services commissioner to the Family Court or Supreme Court. Acceptable reasons for requesting such an order would include a change of circumstances involving the foster family, foster child or biological family; a determination that making such a change would protect the best interests of the child; or in order to facilitate visitation.

When an alternative schedule of visitation is approved or ordered by the court, it must remain in effect for the duration of the placement of the child unless the court modifies the schedule at a later date. An alternative schedule of visitation may also be agreed upon by mutual consent of all the parties involved, as long as the change is equal to and consistent with the previous agreement or order.

- H. The putative father of out-of-wedlock children has no enforceable visitation rights unless there has been an adjudication of paternity or a legally executed acknowledgement of paternity.

IV. Required Action

The following actions related to visitation rights are required in implementing the provisions of Chapter 457:

- A. When a child is voluntarily placed in foster care, any previous court order or written agreement granting visitation rights to the non-custodial parent or grandparents of the child must be incorporated in foster care placement documents and documented in the uniform case record.
- B. Any previous order or agreement for visitation rights must be incorporated in any preliminary order of placement. In any case where a dispositional hearing will not be held within 30 days of the filing of a petition, the local social services department and/or the voluntary agency caring for the child must comply with previous orders granting visitation rights.
- C. Inquiry must be made by the local social services department to the State Central Register of Child Abuse and Maltreatment (SCR) when:
1. a previous visitation rights order or agreement is to be incorporated in a foster care document. The inquiry must determine whether a non-custodial parent or grandparent

seeking enforcement of such rights is the subject or other person named in an indicated report of child abuse or neglect.

2. a non-custodial parent or grandparent has petitioned the court for approval or modification of visitation rights. The inquiry must determine whether the person seeking visitation is the subject or other person named in an indicated report of child abuse or neglect, or is a respondent in a child protective case concerning the child with whom visitation is requested.

In initiating the inquiry, the social services official should attach a court order to the specific inquiry form (See Appendix for form and instructions) in order to obtain an expeditious SCR response with supporting documentation in case of a match. The court order should indicate that the documentation is to be sent directly to the social services official. While the local department of social services may initiate the required SCR inquiry without such a court order, if the inquiry results in a positive response, no supporting information will be provided by the SCR until a court order is received, further delaying any decision or action that may be dependent on the SCR report.

Please note: If all information requested on the inquiry form cannot be obtained from the non-custodial parent or grandparent, a note of explanation should be attached to the form to prevent its return to the district as incomplete. SCR requires addresses at which the non-custodial parent or grandparent has resided since 1973 or from the age of 18, whichever is later.

If an indicated report is found and supporting documentation provided for review, a careful assessment must be made by the social services official to determine whether the child's best interests require a petition to the court to modify or deny those visitation rights already in place. The assessment may include discussions with the person indicated and/or with the child, and the use of available risk assessment procedures, as well as a review of the SCR documents.

Pending receipt of the SCR report and/or any court action to modify or deny visitation, previous court orders granting visitation rights must be enforced.

- D. When a local social services commissioner opposes visitation by the non-custodial parent or grandparent of the child, the commissioner must petition the court for denial or modification of existing visitation rights. In such cases, all parties involved in such a petition have a right to be heard by the court. Denial of previously ordered visitation rights can only be ordered by the court if there is "competent, relevant, and

material evidence" that visitation would endanger the life or health of the child. A request to modify a previous visitation order may be acceptable to the court when there is a change of circumstances or it is determined that such a change would be in the best interests of the child.

- E. If the local social services commissioner determines that previously court-ordered visitation by a parent who is a respondent in a child protective case would endanger the child's life or health, the commissioner must ask the court for an order to permit such visitation only under the supervision of an employee of the local department of social services, according to the law.
- F. The local social services commissioner is responsible for compliance by the local district or voluntary agency in enforcing visitation rights granted to the non-custodial parent and/or grandparents.
- G. When visitation rights permit a child's visit to the home of a non-custodial parent or grandparent, the authorized child caring agency is responsible for the return of the child to the foster care placement.
- H. The local social services department has the right and the responsibility to be heard by the court in all cases involving the right of visitation to a child placed in the care of the agency.

V. Systems Implications

Inquiry must be made by the local social services department to the State Central Register of Child Abuse and Maltreatment (SCR) to determine whether a non-custodial parent or grandparent petitioning for visitation rights to a foster child is the subject or other person named in an indicated report. (See IV.C. for specific criteria and procedures.) An inquiry form for this purpose and procedural instructions are attached in the Appendix. A separate form is required for each child.

VI. Additional Information

- A. According to Chapter 457, the court must approve a petition for visitation rights unless there is "competent, relevant, and material evidence" that visitation would endanger the life or health of the child. Such evidence would include a positive report from the SCR with supporting documentation.

- B. If a local social services commissioner petitions the court to deny or modify visitation rights of the non-custodial parent or grandparents, the court must provide notice to all interested parties so that they may be represented at the hearing.
- C. If any of the parties involved in the care of the foster child ask the court for a change in a visitation order, notice of the hearing on this matter must be provided by the court to all parties so that they may be represented at the hearing. Such persons would include, but not be limited to, the social services commissioner and the law guardian of the child.
- D. In a child protective case, the court must serve notice to the non-custodial parent of the child that the child has been removed from his or her home by a social services official. The notice must include:
 - 1. the name and address of the official who has temporary custody of the child; and
 - 2. the name and address of the agency or official with whom the child has been temporarily placed; and
 - 3. the right to seek enforcement of visitation rights with the child.
- E. In a child protective case, if a petition is filed with the court by the non-custodial parent or grandparent seeking visitation rights with the child in care, notice of such a petition must be given to the respondent in the case, the local social services official responsible for the care of the child, and the child's law guardian.
- F. If the respondent in a child protective case petitions the court for visitation rights, notice must be given to the local social services commissioner and the child's law guardian so that they may be represented in a court hearing.

VII. Effective Date

This directive is effective on November 1, 1990, retroactive to November 1, 1988, the effective date of Chapter 457 of the Laws of 1988.

Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services