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### Administrative Directive

<b>Transmittal:</b>	11-OCFS-ADM-04
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	April 25, 2011
<b>Subject:</b>	<b>Religious Designation of a Foster Child and a Child Being Placed for Adoption</b>
<b>Suggested Distribution:</b>	Directors of Social Services Foster Care Supervisors Child Protective Services Supervisors Adoption Supervisors Home-finding Supervisors Staff Development Coordinators
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<b>Attachments:</b>	Yes (links provided)
<b>Attachment Available Online:</b>	<a href="http://www.ocfs.state.ny.us/main/forms/">http://www.ocfs.state.ny.us/main/forms/</a> or <a href="http://ocfs.state.nyenet/admin/Forms">http://ocfs.state.nyenet/admin/Forms</a>

## Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 421.18(c), 428.3 and 441.11	SSL §373 FCA §116	OCFS Adoption Services Guide for Caseworkers	

### I. Purpose

The purpose of this Administrative Directive (ADM) is to remind social services districts and voluntary authorized agencies of their legal and programmatic obligations in regard to the religious designation of a child in making foster care and adoptive placements. This directive will also address the use of an Office of Children and Family Services (OCFS) form for the purpose of obtaining the religious wishes of parents when their child is being placed in foster care or for adoption.

### II. Background

Religious consideration in the placement of a foster child or child being placed for adoption has been the subject of New York State statute and regulations for many decades. While enacted many years ago and although the landscape of the foster care system has significantly changed since these provisions were first enacted, they remain in effect today and must be complied with.

The standards that will be discussed in this directive are rooted in the Constitution of the State of New York (Article VI, §32) that reads as follows:

“When any court having jurisdiction over a child shall commit or remand it to an institution or agency or place it in the custody of any person by parole, placing out, adoption or guardianship, the child shall be committed or remanded or placed, where practicable, in an institution, agency governed by person, or in the custody of a person of the same religious persuasion as the child.”

Section 373 of the Social Services Law (SSL) addresses the standards for how and when the issue of religion is to be addressed when placing a foster child in a foster or adoptive home or with a voluntary authorized agency under the control of person of a particular religion (a sectarian agency). The statute provides that, where practicable, children are to be placed into foster/adoptive homes of the same religious faith as the child or if a higher level of care is necessary, placed in an agency operated boarding home, group home or institution operated by a voluntary authorized agency under the control of persons of the same religious faith as the child.

Section 373 of the SSL also provides that the religious faith of the foster child must be preserved and protected after placement. OCFS regulations require that provision must be made for each

foster child to attend services conducted in the child's own religious faith and to receive religious instructions in such faith, unless the parent(s) or legal guardian expressly request otherwise, in writing. In addition, the religion of the child in foster care may not be changed, except with the written consent of the child's parent or guardian. (See 18 NYCRR 441.11).

Voluntary authorized agencies that care for children of different faiths must make provision for the protection of the religious faith of each foster child in accordance with OCFS regulation 18 NYCRR 441.11.

A significant provision in section 373 of the SSL relates the process whereby a parent may expressly designate his or her wishes concerning religion in regard to the placement of his or her child in foster care or in an adoptive placement. The birth parents of a child born in wedlock [birth mother and birth father] and the birth mother and the birth father of a child born out of wedlock whose consent to the adoption of the child is required have the legal right under section 373(7) of the SSL to make such designation of religious placement wishes. The parents of an adopted child would have the same rights as the birth parents of a child born in wedlock.

Section 373(7) of the SSL provides that the provisions of the statute, "... so far as consistent with the best interests of the child, and where practicable..." must be applied to give effect to the religious wishes of the parents referenced above. The statute goes on to state that the religious wishes of the parent include that the child be placed in the same religion as the parent or in a different religion from the parent or with indifference to religion or with religion a subordinate consideration.

### **III. Program Implications**

In order to address the designation provisions of section 373(7) of the SSL, OCFS developed a revised model form "Religious Designation of a Child" (LDSS-3416 [Rev. 3/2011]). Consistent with section 373(7) of the SSL, the OCFS model form offers the parent the following options in regard to the wishes of the parent concerning the role of religion in the placement of the parent's child:

- In the \_\_\_\_\_ religion (either my religion or another religion).
- In the \_\_\_\_\_ religion, but if no home is found for the child within \_\_\_\_\_ months, then the child may be placed without regard to religion (Adoption Only).
- With religion as a less important (subordinate) concern.
- With indifference to religion.

The term “where practicable” is interpreted to apply to the potential existence of a placement of the same religion as designated by the parent. Even if a placement is available that satisfies the religious placement wishes of the parent(s), as in all foster care and adoptive placements, there must be a consideration of whether a placement is in the best interests of the particular child. A number of factors must be taken into consideration (as applicable to the particular case), including, but not limited to:

1. The level of care needed by the child to provide the child with a safe and suitable placement that meets the appropriateness of placement standards set forth in 18 NYCRR 430.11.
2. The ability of the sectarian voluntary authorized agency to meet the care and service needs of the foster child.
3. Compliance with the placement of siblings standards set forth in section 1027-a of the Family Court Act (FCA), section 358-a of the SSL and 18 NYCRR 431.10.
4. Compliance with standards relating to placement of children with a relative in accordance with section 1017 of the FCA.
5. Compliance with placement preference provision of the federal Indian Child Welfare Act of 1978 and 18 NYCRR 431.18.
6. Compliance with court ordered placement with a particular voluntary authorized agency or foster parent.

In the event a decision is made not to honor the religious wishes of a parent, the agency must document the reasons for such decision in the child’s case record.

#### **IV. Required Action**

The uniform case record of a child in foster care must include documentation of an identified religion (if applicable) and any religious preference forms signed by the child’s parents [see 18 NYCRR 428.3(b)(2)(i)].

The issue of religion may arise in regard to conditions that a parent seeks to impose in the process of a surrender of guardianship and custody in accordance with sections 383-c or 384 of the SSL. Prior to accepting a surrender, the social services district or voluntary authorized agency must ascertain that the birth parent or guardian has a full understanding of the religious faith provisions of section 373 of the SSL (see 18 NYCRR 421.6[h]). This issue is also discussed in the OCFS “Adoption Services Guide for Caseworkers.”

As a child enters foster care, the social services district or voluntary authorized agency must discuss and inquire into the religious placement wishes of the child’s parents as noted previously in this directive. The parent must be given the opportunity to set forth his or her religious designation

wishes in either form LDSS-3416 or a local equivalent form. The completed form must be maintained in the child's uniform case record. The form is available on the OCFS internet and intranet sites, under Forms (Foster Care and Adoption), in both [English](#) and [Spanish](#) (the latter is LDSS-3416S) at the following respective links:

<http://www.ocfs.state.ny.us/main/forms/> and

<http://ocfs.state.nyenet/admin/Forms>.

If the parent cannot be found or refuses to execute a religious preference form, that unavailability or refusal must also be recorded in the child's uniform case record. A parent also has the option to indicate her wishes by way of a letter, affidavit or other signed document. In the absence of expressed wishes of the parent(s), determination of the religious wishes, if any, must be made upon other facts of the particular case, and if there is no evidence to the contrary, it is presumed that the parent(s) wish for the child to be reared in the religion of the parent.

Again, in regard to placement, the elements of "where practicable" and "best interests of the child" must still be applied in such cases.

## **V. Systems Implications**

None

## **VI. Effective Date**

This release is effective upon issuance.

*/s/ Nancy W. Martinez*

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### **Issued By:**

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development