



# Office of Children and Family Services

**Kathy Hochul**  
Governor

52 WASHINGTON STREET  
RENSSELAER, NY 12144

**Sheila J. Poole**  
Commissioner

## Administrative Directive

<b>Transmittal:</b>	22-OCFS-ADM-04
<b>To:</b>	Local Departments of Social Services Commissioners Executive Directors of Voluntary Authorized Agencies
<b>Issuing Office/Division:</b>	Division of Child Welfare and Community Services Division of Youth Development and Partnerships for Success Division of Juvenile Justice and Opportunities for Youth
<b>Date:</b>	February 1, 2022
<b>Subject:</b>	<b>Chapter 798 Laws of 2021: Youth Reentry Into Foster Care Ages 18-21</b>
<b>Suggested Distribution:</b>	Directors of Local Departments of Social Services Executive Directors of Voluntary Authorized Agencies Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors Staff Development Coordinators CONNECTIONS Implementation Coordinators Runaway and Homeless Youth Programs Runaway and Homeless Youth Coordinators
<b>Contact Person(s):</b>	See section VI.
<b>Attachments:</b>	None

### Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
21-OCFS-ADM-07			Chapter 798 of the Laws of 2021, Family Court Act (FCA) Articles 3,7, 10, 10-A, and 10-C, FCA §631, Social Services Law (SSL) §§358-a; 383-c, 384 and 384-b		
18-OCFS-ADM-19					
11-OCFS-ADM-02					

### I. Purpose

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSSs), voluntary authorized agencies (VAs), runaway and homeless youth programs and coordinators, and other entities of the requirements in Chapter 798 of the Laws of 2021 (Chapter 798).

Chapter 798 amends various sections of the Family Court Act (FCA) related to youth between the ages of 18 and 21 who are reentering foster care.

## II. Background

Existing laws require supports and services to youth who have exited foster care between the ages of 18-21. In addition, the New York State Office of Children and Family Services (OCFS) has set forth policies and procedures related to those laws. These standards are summarized below.

Beginning, October 1, 2010, federal Title IV-E foster care reimbursement became available to otherwise eligible youth between the ages of 18 and 21 who remain in foster care.

Chapter 342 of the Laws of 2010 went into effect on November 11, 2010, and permitted youth formerly in foster care between the ages of 18 and 21 to reenter foster care under certain circumstances, and required LDSSs to provide notice to a youth transitioning out of care of their right to reenter care.<sup>1</sup>

Part M of Chapter 56 of the Laws of 2017 made several changes to the Executive Law to include adding new responsibilities for Runaway and Homeless Youth (RHY) programs when youth at such programs may have been formerly in foster care or who may meet the definition of destitute child.<sup>2</sup>

The Supporting Foster Youth and Families through the Pandemic Act, Division X of the Consolidated Appropriations Act, 2021, Public Law (P.L.) 116-260, included a moratorium on youth aging out of foster care, authorized reentry into foster care for youth who previously aged out of foster care during the COVID-19 health emergency period, and provided additional funding for the Chafee and Education Training Vouchers.<sup>3</sup> The moratorium ended on January 30, 2021.

Most recently, Chapter 798 was signed into law by Governor Kathy Hochul on December 22, 2021. Chapter 798 amends various sections of the FCA as it pertains to reentry of youth between the ages of 18-21 to foster care after final discharge.

## III. Program Implications

Chapter 798 includes the following:

- Requires youth placed in foster care under Article 3 of the FCA (Article 3) to consent to an extension of placement, regardless of the age the acts were committed, in order to remain in placement beyond their 18<sup>h</sup> birthday.
- Requires that youth be placed in a supervised setting<sup>4</sup> or a foster family home, which includes a kinship placement<sup>5</sup> if they were previously placed in foster care under Article 3 or Article 7 of the FCA (Article 7).
- Expressly allows family courts to hold permanency hearings for youth who reenter foster care and were previously in foster care via Article 3 or 7.
- Specifies that youth reentering foster care under Article 10-B of the FCA (Article 10-B) who were previously in OCFS custody must be placed in the custody of the LDSS of the youth's residence.
- Allows youth who left foster care at age 16 to reenter foster care after age 18 if they are homeless or at risk of homelessness.
- Expands the definitions of “former foster care youth” and “foster care setting” to clarify who is allowed to motion to return to foster care between the ages of 18-21.

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<sup>1</sup> 11-OCFS-ADM-02.

<sup>2</sup> 18-OCFS-ADM-19.

<sup>3</sup> 21-OCFS-ADM-07.

<sup>4</sup> Social Services Law §371(22), 33-OCFS-ADM-02.

<sup>5</sup> This includes a relative or fictive kin foster home.

- Allows youth who left foster care at age 16 to reenter foster care after age 18 if they are at risk of homelessness.
- Establishes time frames for when it is allowable for a motion to return to foster care to be filed, differentiating between youth who left foster care prior to their 18<sup>th</sup> birthday and those who left after their 18<sup>th</sup> birthday.

### **Frequently Asked Questions:**

#### **1. Which youth are allowed to make a motion to family court to reenter foster care in accordance with Article 10-B of the FCA?**

The ability to file a motion to return to foster care applies to the following youth:

- Youth who are at least 18 years of age but under the age of 21 and who had been discharged from a foster care setting on or after
  - attaining the age of 18 due to a failure to consent to continuation in foster care; or
  - attaining the age of 16 and is or is likely to be homeless unless returned to foster care.
- Youth who were:
  - placed in foster care with an LDSS or VA, as applicable, pursuant to, FCA Articles 3, 7, 10, 10-A, or 10-C, Social Services Law (SSL) §358-a; or
  - freed for adoption, but not yet adopted (FCA §631, SSL § §383-c, 384, 384-b); or
  - placed with OCFS as a juvenile delinquent for a non-secure level of care or released from a non-secure level of care; or
  - placed in an approved Close to Home Limited Secure level of care but released from a non-secure level of care.

#### **2. Which youth are not allowed to make a motion to family court to reenter foster care in accordance with Article 10-B of the FCA?**

The ability to file a motion to return to foster care does not apply to youth who left foster care from

- a limited secure or secure level of care with OCFS; or
- a limited secure level of care where the placement was made in an LDSS that has an approved Close to Home program pursuant to SSL § 404.

#### **3. Does family court impose any time limitations on motions asking for a youth to reenter foster care in accordance with Article 10-B of the FCA?**

Yes.

- Youth discharged from foster care on or after their 18<sup>th</sup> birthday have 24 months from the date of their first final discharge to motion the court.
- Youth discharged from the ages of 16 until prior to their 18<sup>th</sup> birthday may not file a motion after their 20<sup>th</sup> birthday.

#### **4. Who is authorized to file the motion in family court for the youth to reenter foster care in accordance with Article 10-B of the FCA?**

The youth or an official from an LDSS, upon consent of the youth, may file the motion in family court.

**5. Who is responsible for taking custody of a youth defined above who reenters foster care in accordance with Article 10-B of the FCA?**

The youth must reenter foster care in either

- the LDSS from which they were most recently discharged;
- the LDSS of the youth's county of residence in the case of a youth who was previously placed with OCFS; or
- the last authorized agency or LDSS into whose custody and guardianship such youth had been placed, in the case of a child freed for adoption.

**6. If a youth who was previously placed with OCFS motions family court to reenter foster care in accordance with Article 10-B but has no documented address at the time of the motion, which LDSS is required to assume custody?**

If a youth that was previously placed with OCFS has no permanent address or clear county of residence, the LDSS of the county the youth resided in when they were most recently placed into OCFS custody must assume custody of the youth.

**7. What foster care settings are allowable for a youth who reenters foster care in accordance with Article 10-B of the FCA?**

Youth who were initially placed into foster care via Articles 3 or 7 of the FCA and are reentering foster care via Article 10-B of the FCA may only be placed into a foster family home, including kinship care, or into a supervised setting.

Youth who were initially placed into foster care by any of the other allowable means discussed in Question #1 above may be placed in any setting that meets their needs and is consistent with current placement requirements.

**8. Does Chapter 798 require youth under 18 years of age placed into foster care via Article 3 to consent to an extension of placement in order to remain in placement beyond their 18<sup>th</sup> birthday regardless of the terms of their court order?**

Yes, Chapter 798 requires that youth who are placed into foster care via Article 3 consent to an extension of placement in order to remain in their placement beyond their 18<sup>th</sup> birthday.

**9. Does Chapter 798 provide family court with jurisdiction to hold permanency hearings for a youth reentering foster care under FCA Article 10-B who was previously in foster care under an FCA Articles 3 or 7 placement?**

Yes, the time frames for permanency hearings are different for a youth placed under Article 3 or 7. This change in law allows the family court to hold permanency hearings under 10-A of the FCA for these youth when they reenter foster care under Article 10-B.

**10. What responsibilities does an LDSS or OCFS have to inform youth of the ability to reenter foster care due to Chapter 798?**

As specified in 11-OCFS-ADM-02 and 18-OCFS-ADM-19, LDSSs, VAs, and RHY programs have been required to and must continue to provide notice to all youth leaving foster care of their ability

to return to foster care in certain situations. In addition, these entities should notify any youth who may now qualify to reenter foster care due to Chapter 798 of the ability to do so.

OCFS will notify any youth currently in its care and custody who qualifies to reenter foster care due to Chapter 798 of this option and will also assist the youth in connecting with their LDSS of residence.

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

All LDSSs and VAs must review their practices and procedures regarding youth reentering foster care in accordance with Article 10-B and update them to reflect the requirements discussed in this ADM and pursuant to Chapter 798.

LDSSs must determine Title IV-E eligibility for youth reentering care utilizing the OCFS-4415, *Reentry into Foster Care for Youth Age 18 and Over Eligibility Checklist*.

#### **V. Systems Implications**

##### ***CONNECTIONS and Activities System Implications for Reentry of Youth***

###### **A. CONNECTIONS**

Currently, CONNECTIONS does not allow the tracking of youth 18 years of age or older at time of re-entry. Tracking of youth 18 years of age or older will not be available to end users in the near future. CONNECTIONS processing for this population requires the intervention of OCFS-IT/state staff.

Youth who continue in foster care at age 18, 19, 20, or older are not subject to these rules. The CONNECTIONS case can remain open, and the youth can be tracked with program choice and permanency planning goal (PPG).

In order to track a former foster care youth 18, 19, or 20 years old who reenters foster care, the worker must do the following:

1. If there is currently a CONNECTIONS FSS/CWS stage opened and the child is not already part of that stage, add the child to the stage.
2. If there is not a CONNECTIONS FSS/CWS opened, create an FSI and stage progress to an FSS/CWS stage. **DO NOT CREATE THE WMS APPLICATION.**
3. Send a request to the AppHelp mailbox (ocfs.sm.conn\_app@ocfs.state.ny.gov) with the following information:
  - a. Case and stage ID
  - b. Child's person ID (PID)
  - c. Program choice and effective date of program choice
  - d. PPG and effective date of PPG

Once processing has been completed, the worker will be advised to either process the addition of the child to the existing WMS case or create the WMS application and process the WMS case opening.

For a child who left foster care at age 18 and who was freed for adoption (in a CCR) at the time, and who reenters foster care, it is recommended that they be placed in a CWS stage. For FASP purposes, the “no caretaker” box is to be checked.

#### B. Welfare Management System (WMS)

No system changes have been made to WMS, as Preventive Services and Foster Care POS lines can already be authorized up to 21 years of age. However, as foster care and preventive cases cannot be opened in WMS independent of CONNECTIONS, note CONNECTIONS instructions above.

#### C. Activities Window

The following new activities legal event codes should be used to report the court proceedings of former foster care youth.

Type of Legal Event (Modifier A) codes:

a) 22 =Article 10-B 18+ Reentry to Foster Care

- Requires a previous M990 (Child Placement Ended) movement code
- The L300 activity date must be greater than the activity date of the M990.

b) 23 =Article 10-B 18+ Permanency Hearing Review

- Requires previous L300 with MOD A of 22

Appropriate claiming/reimbursement is dependent on system entered documentation that Legal Authority is in effect (L300 w/MOD A of 22/23).

#### D. Medicaid

All children who are in the care and custody of LDSSs, and who are citizens or have satisfactory immigration status, are categorically eligible for Medicaid.

## VI. **Contacts**

Any questions concerning this release should be directed to the appropriate regional office.

Buffalo Regional Office – Amanda Darling (716) 847-3145

[Amanda.Darling@ocfs.ny.gov](mailto:Amanda.Darling@ocfs.ny.gov)

Rochester Regional Office – Chris Bruno (585) 238-8192

[Chris.Bruno@ocfs.ny.gov](mailto:Chris.Bruno@ocfs.ny.gov)

Syracuse Regional Office – Sara Simon (315) 423-1200

[Sara.Simon@ocfs.ny.gov](mailto:Sara.Simon@ocfs.ny.gov)

Albany Regional Office – John Lockwood (518) 486-7078

[John.Lockwood@ocfs.ny.gov](mailto:John.Lockwood@ocfs.ny.gov)

Spring Valley Regional Office –Sheletha Chang (914) 801-3231

[Sheletha.Chang@ocfs.ny.gov](mailto:Sheletha.Chang@ocfs.ny.gov)

New York City Regional Office – Ronni Fuchs (212) 383-4873

[Ronni.Fuchs@ocfs.ny.gov](mailto:Ronni.Fuchs@ocfs.ny.gov)

Native American Services – Heather LaForme (716) 847-3123

[Heather.LaForme@ocfs.ny.gov](mailto:Heather.LaForme@ocfs.ny.gov)

Close to Home Oversight – Donte Blackwell (212) 383-7261

[Donte.Blackwell@ocfs.ny.gov](mailto:Donte.Blackwell@ocfs.ny.gov)

## VII. Effective Date

This policy directive is effective immediately upon release.

*/s/ Lisa Ghartey Ogundimu, Esq.*

**Issued by:**

Name: Lisa Ghartey Ogundimu, Esq.

Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services

*/s/ Nina Aledort, Ph.D., LMSW*

**Issued by:**

Name: Nina Aledort, Ph.D., LMSW

Title: Deputy Commissioner

Division/Office: Division of Youth Development and Partnerships for Success

*/s/ Felicia A. B. Reid, Esq.*

**Issued by:**

Name: Felicia A. B. Reid, Esq.

Title: Deputy Commissioner

Division/Office: Division of Juvenile Justice and Opportunities for Youth