UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW HOPE FAMILY SERVICES, INC.,	:	
	:	18-CV-1419
Plaintiff,	:	(MAD)(TWD)
	:	
-against-	:	**DECLARATION OF CAROL MCCARTHY**
SHEILA J. POOLE, in her official capacity as Acting Commissioner for the Office of Children and Family Services for the State of New York,	:	
Defendant.	:	

I, Carol McCarthy, declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an employee of the New York State Office of Children and Family Services ("OCFS"), and I make this declaration in support of Defendant's motion for summary judgment.

2. I have been employed by OCFS since November 13, 2003. I am currently the Director of Adoption Services within the Division of Child Welfare and Community Services. I have been in this position since April 21, 2015.

3. OCFS's Division of Child Welfare and Community Services is charged with the responsibility to provide and oversee programs and services involving foster care, adoption and adoption assistance, child protective services, preventive services for children and families, services for pregnant adolescents, and protective programs for vulnerable adults.

4. In my role as the Director of Adoption Services, I oversee the Bureau of Permanency Services. The Bureau of Permanency Services is responsible for, among other things, (1) reviewing applications and renewals for not-for-profit agencies that operate adoption

programs within the State of New York; (2) promulgating and managing compliance with regulations related to the provision of adoption services and practices; (3) providing information and referral assistance on adoption, foster care, and family preservation to parents and professionals through the New York Parents Connection Help Line; (4) overseeing the administration of child photolistings in The Adoption Album, the Family Adoption Registry, and family photolisting on the state's internal The Adoption Album system; (5) reviewing adoption subsidy requests for maintenance and medical coverage based on special needs of children; (6) maintaining the Putative Father Registry and responding to court inquiries regarding the registration of putative fathers; (7) processing the placement of children from other states into New York State and from New York State into other states through the Interstate Compact on the Placement of Children; (8) providing adoption technical support to address local concerns; and (9) enhancing public awareness to increase opportunities for adoption of New York' s waiting children.

Authorized Adoption Agencies

5. New York law has governed adoptions in New York for well over a century. OCFS devotes hundreds of millions of tax dollars every year to subsidize and oversee adoption in New York State. OCFS devotes significant resources and employs staff members across the state who inspect adoption providers, research best practices, coordinate with stakeholders, promulgate regulations, collect data, publish reports, conduct hearings, and draft policies related to adoption.

6. Domestic relations law recognizes two types of adoption in New York State: agency adoption and private-placement adoption. In an agency adoption, some authorized agencies approve the prospective adoptive parents, assumes custody and guardianship of the

child, and supervises the placement. In other placements, one agency is the approving agency while the other is responsible for custody and guardianship of the child. OCFS regulates and oversees authorized agencies.

7. By contrast, a private-placement adoption is an adoption that occurs without the assistance of an authorized agency; instead, the court pre-certifies the prospective adoptive parents, who directly take temporary custody of the child pending finalization of the adoption. While still subject to judicial oversight, these adoptions occur outside of OCFS' regulatory authority, with the exception of Interstate Compact on the Placement of Children cases, related to authorized agencies.

8. New Hope is an authorized agency that facilitates agency adoptions. As such, it is subject to OCFS' regulatory authority and oversight.

9. Only authorized agencies with approved adoption programs are permitted to provide adoption services in New York State. Authorized agencies include both local departments of social services and not-for-profit agencies (voluntary authorized agencies), such as New Hope. N.Y. Soc. Serv. Law § 371(10). In many cases, the local departments of social services contract with voluntary authorized agencies to provide adoption services on the government's behalf. *See* 18 N.Y.C.R.R. § 421.9. Moreover, prospective adoptive parents served by voluntary authorized agencies may seek a child in the custody and guardianship of a local department of social services and may be eligible for government-funded adoption subsidy, even if the voluntary authorized agency itself does not receive government funding. As voluntary authorized agencies provide the same adoption services as the local departments of social services, the laws, regulations, and policies that govern authorized agencies with respect to adoption services do not distinguish between them.

10. OCFS' government website contains a comprehensive list of OCFS-approved voluntary authorized agencies with adoption programs. *See* https://ocfs.ny.gov/programs/adoption/agencies/voluntary.php.

11. An authorized agency must meet three distinct requirements: (1) it must be organized under the laws of the state and have the corporate authority to place out children; (2) it must have its actual place of business in New York; and (3) it must be "approved, visited, inspected and supervised by the office of children and family services or . . . submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children . . . ." N.Y. Soc. Serv. Law § 371(10).

12. In order to meet the first requirement, an agency must file a Certificate of Incorporation with the New York State Department of State. The Certificate of Incorporation establishes the authorized agency as a corporate entity. If an agency intends to have an adoption program, it must also obtain an approval from OCFS, to be filed in conjunction with its Certificate of Incorporation or Certificate of Amendment To obtain the OCFS approval, an agency must submit an application packet and business plan to the appropriate OCFS regional office. Upon receipt, OCFS conducts a site visit, which includes a full review of the proposed adoption program and a fiscal review, and determines whether to issue the approval. It is the act of filing of the Certificate of Incorporation and approval that gives the authorized agency the legal authority to operate an adoption program in New York.

13. Corporate authority can be ended by: (1) the corporation itself filing a Certificate of Amendment to remove that authority; (2) the corporation filing a Certificate of Dissolution to end the corporate entity; (3) expiration of the corporate authority, if the authority was limited in duration; or (4) by court order.

14. In New York State, nearly all authorized agencies have corporate authority for a limited duration and must seek reauthorization prior to expiration. OCFS must provide its approval for each reauthorization.

15. In order to assess if it will approve the reauthorization, OCFS conducts a comprehensive review of the authorized agency, which includes an agency visit, completion of an adoption services assessment, and drafting of an Adoption Agency Program Review Report. As part of this assessment, OCFS interviews staff members and reviews the authorized agency's application for authorization/reauthorization, business plan, financial information, policies and procedures, forms, and correspondence. OCFS utilizes this review process to determine if the authorized agency is in compliance with state laws, regulations, and policies.

16. Only a small number of authorized agencies, including New Hope Family Services, Inc. ("New Hope"), have corporate authority in perpetuity, and therefore do not need to re-file with the Department of State.

17. To meet the third requirement, the authorized agency must be approved, visited, inspected, and supervised by OCFS, or must submit and consent to such oversight. In addition to the approval an adoption agency receives at the time of corporate authorization/ reauthorization, the authorized agency remains subject to *ongoing* approval and supervision. Such oversight includes determining whether an agency is complying with state law, regulations, and policies, and such compliance may be a condition for ongoing approval. This requirement is distinct from the requirement for corporate authority and applies to all authorized agencies, including those with perpetual corporate authority. OCFS may review the adoption program and withhold its approval for failure to meet OCFS standards, regardless of if or when the agency's corporate authority is up for renewal. Declining to approve an adoption program does not constitute a

revocation or invalidation of the authorized agency's certificate of incorporation; it merely ends the specific program for which approval is required.

18. Prior to 2017, it was OCFS' practice to utilize its corporate reauthorization approval process to satisfy its general oversight obligations. In other words, the adoption programs at authorized agencies were only reviewed when the agency sought approval for corporate reauthorization, unless special circumstances warranted additional monitoring or intervention. This practice minimized the need for duplicative visits to authorized agencies.

19. However, as a result of this practice, authorized agencies with perpetual corporate authority, including New Hope, did not have their adoption programs visited and reviewed on a regular basis. In 2017, OCFS discovered and corrected this oversight by visiting and reviewing every authorized agency with perpetual authority. OCFS revised its practice to require a site visit for every adoption program every year; these annual visits consist of a substantially similar review to the one done at the time of corporate reauthorization. If the authorized agency is seeking corporate reauthorization that year, the reauthorization visit replaces the agency visit.

20. During OCFS's program reviews, it assesses the quality of the adoption program and makes determinations regarding the agency's compliance with applicable laws, regulations, or policies. OCFS routinely works with authorized agencies to ensure compliance so as to maintain the greatest number of resources available to families who wish to surrender or adopt a child. OCFS provides technical assistance, including identifying and providing training, providing guidance on best practices and strategies, and facilitation of meetings and forums.

21. When OCFS identifies a violation, it documents the violations and works with the authorized agency to develop a Program Improvement Plan (PIP), which assists the program with implementing necessary changes. This collaborative approach minimizes the need for

enforcement action and demonstrates OCFS's commitment to supporting authorized agencies in New York State.

22. Only if an agency is unwilling or unable to comply will OCFS seek to disapprove an adoption program or deny a request for corporate recertification. In my experience overseeing the Bureau of Permanency Services, it is exceedingly rare for an authorized agency to refuse to come into compliance. However, when necessary, OCFS has sought to disapprove a program due to persistent regulatory violations.

23. OCFS has used this "comply-or-close" enforcement method with various agencies who have failed to comply with OCFS regulations. These enforcement actions have been taken without consideration of whether the agency identifies as secular or faith-based. Moreover, these enforcement actions have been utilized for various regulatory violations, not just violations of the anti-discrimination regulations set forth in 18 N.Y.C.R.R. §421.3(d). Attached as Exhibit "" are examples of secular agencies who have been subject to this enforcement method for various regulatory violations.

18 N.Y.C.R.R. §421.3(d)

24. OCFS is authorized by State law to promulgate regulations that establish standards and criteria for adoption practices, including standards for evaluating prospective adoptive parents.

25. OCFS promulgated 18 N.Y.C.R.R. §421.3(d) to prohibit discrimination in adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion or disability. 18 N.Y.C.R.R. §421.3(d) prohibits discrimination at all stages of the adoption process.

26. The subject regulation, 18 N.Y.C.R.R. §421.3(d), is critically important to the State's adoption policies and practices and was promulgated to further OCFS's mission to promote the safety and well-being of families and children.

27. The State has a strong interest in preventing discrimination in the provision of adoptive services. Prohibiting discrimination serves the best interests of vulnerable children by ensuring the state has a broad and diverse pool of potential adoptive parents. Critical to meeting this objective are policies that prohibit disqualification of any potential adoptive parents due to their sexual orientation, marital status, or any other characteristic that is wholly unrelated to parenting ability. Prohibiting such discrimination maximizes the number of prospective adoptive parents who may be assessed to determine the safety and suitability of placing a child in their home to determine whether the individual can appropriately meet the needs of a child including the child's safety, health, permanency, well-being and mental, emotional and physical development.

28. The subject regulation also seeks to prevent the irreparable trauma and social harm caused by discrimination against lesbian, gay, bisexual, transgender, queer, or questioning (LGBTQ) people—a group that has been historically excluded from family formation under the law. The State has a strong interest in preventing and remedying the stigmatization caused by the systemic exclusion of LGBTQ people from public and civic life based solely on their sexual orientation. These harms can be particularly acute where, as here, the adoption program engaging in this discrimination is sanctioned by the State. The subject regulation prevents these harms by prohibiting authorized agencies from implementing policies or establishing practices that imply that the sexual orientation of gay, lesbian, and bisexual prospective parents, but not of

heterosexual prospective parents, is relevant when evaluating their appropriateness as adoptive parents.

29. Furthermore, prohibiting discrimination against LGBTQ people across the child welfare and juvenile justice systems prevents harm to vulnerable LGBTQ youth, who are grossly overrepresented in out-of-home care—often due to familial rejection or abuse because of their sexual orientation or gender identity. Nondiscrimination regulations and policies affirm LGBTQ youth by recognizing the LGBTQ people as full and equal members of society.

30. Additionally, the State has a strong interest in ensuring government services are provided on an equal basis to all residents. Since OCFS authorizes and regulates adoption programs operating in New York, allowing agencies with religious objections to refuse to serve all people equally would undermine the State' s ability to provide government services on a nondiscriminatory basis and without favoring particular religious beliefs.

31. The subject regulation applies uniformly and neutrally to all authorized agencies operating an adoption program. OCFS requires all authorized agencies to comply with applicable laws, regulations, and policies, including 18 N.Y.C.R.R. §421.3. All authorized agencies are prohibited from engaging in discriminatory practices or harassment against applicants for adoption services based on sexual orientation or marital status. OCFS does not offer or provide exemptions to 18 N.Y.C.R.R. §421.3 to any agency or class of agencies on either a mandatory or discretionary basis.

32. The subject regulation was not enacted to target faith-based agencies, nor has it been selectively enforced to achieve that end. In fact, OCFS has not closed, or attempted to close any other faith-based agencies for failure to comply with the anti-discrimination provisions in 18

NYCRR §421.3. In 2018, Catholic Charities of Buffalo voluntarily decided to close its adoption program. OCFS did not review or take any enforcement action against Catholic Charities adoption program prior to its decision to close.

33. OCFS conducts program reviews of all authorized agencies that operate adoption programs, including those who received their corporate authority to operate in perpetuity, to determine if the agency meets OCFS standards regarding nondiscrimination. OCFS does not target specific agencies for review. OCFS follows the same process for identifying and remedying violations of its nondiscrimination regulation as other regulatory violations. Specifically, OCFS documents the violation and requests the agency come into compliance through a performance improvement plan; if the agency is cannot or will not comply, OCFS seeks disapproval of the program.

Adoption Process

34. Authorized agencies receive and respond to inquiries from, conduct orientation sessions for, and offer OCFS-approved applications to prospective adoptive parents. After an authorized agency receives an adoption application, it must complete an adoption study. As part of the adoption study, the authorized agency must explore the following characteristics of the prospective adoptive parent or parents: (1) capacity to give and receive affection; (2) ability to provide for a child's physical and emotional needs; (3) ability to accept the intrinsic worth of a child, to respect and share his past, to understand the meaning of separation he has experienced, and to have realistic expectations and goals; (4) flexibility and ability to change; (5) ability to cope with problems, stress and frustration; (6) feelings about parenting an adopted child and the ability to make a commitment to a child placed in the home; and (7)

ability to use community resources to strengthen and enrich family functioning.

35. Pursuant to regulations, an application may only be rejected if: (1) an applicant does not cooperate with the adoption study; (2) an applicant is "physically incapable of caring for an adoptive child;" (3) an applicant is not "emotionally incapable of caring for an adopted child;" or (4) an applicant's approval "would not be in the best interests of children awaiting adoptions." Authorized agencies are prohibited from denying an application for adoption services due to the applicant's membership in any of the protected classes enumerated in 18 NYCRR §421.3. As noted above, this regulation applies uniformly and neutrally to all authorized agencies operating an adoption program.

36. If the application is approved, the authorized agency may place a child with the prospective adoptive parent(s). Per regulation, the placement decision must be made based on the best interests of the child.

37. 18 NYCRR §421.3 prohibits discrimination with respect to placement decisions. OCFS policy, adopted in response to the federal Multiethnic Placement Act of 1994, also prohibit consideration of race, color, or national origin in placement decisions, or decisions as to whether an applicant may become a foster or adoptive parent (annex MEPA policy)

38. However, in rare circumstances, race, color, or national origin may be considered as part of an individualized assessment in order to make a placement decision that is in the child's best interests. OCFS policy and regulation provide that race, color, or national origin may be considered *only* where it can be demonstrated to related to the specific needs of an individual child. The authorized agency may *not* make generalizations about the child's needs based on the child's membership in a particular race, color, or national origin, nor may the

agency routinely consider these factors during the individualized assessment.

39. Similarly, 18 N.Y.C.R.R. §421.3 prohibits discrimination with respect to placement decisions based on the religion of the prospective adoptive parent. New York law and regulations provide that, *where practicable*, the child shall be placed in the custody of a person of the same religious persuasion as the child. N.Y. Soc. Serv. Law § 373; 18 N.Y.C.R.R. 421.18(c). Nonetheless, as with all adoptive placements, the authorized agency must make placement decisions based on the best interests of the particular child. 11-OCFS-ADM-04 attached as exhibit "". The subject law and regulations do not allow the authorized agency to categorically exclude prospective adoptive parents based on the agency's beliefs regarding the applicants' religion.

40. Consideration of the foregoing factors is expressly limited to determining the best interests of the individual child during the placement decision. State regulation and policy, in accordance with federal law, do not permit consideration of these factors when conducting the adoption study to assess the suitability of a prospective adoptive parent. Factors that authorized agencies must consider in making placement decisions are enumerated in New York Social Services Law and OCFS regulations and policies.

2018 Comprehensive Review of New Hope

41. OCFS conducted a comprehensive review of New Hope Family Services in 2018 as part of its effort to review authorized agencies with perpetual authority. OCFS did not target New Hope for review because it identifies as a faith-based organization. In addition to New Hope, all authorized agencies with corporate authority in perpetuity were reviewed as part of this effort.

42. OCFS' review of New Hope in 2018 was its first review subsequent to promulgation of 18 N.Y.C.R.R. §421.3(d). This review was the first time OCFS learned of New Hope's practices with respect to unmarried and same-sex couples.

43. OCFS has historically worked collaboratively with New Hope to address issues such as (1) immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process; (2) requests for non-identifying information and medical information by adoptive families, adoptee or birth parent; including usage of the Adoption Information Registry through the Department of Health; and (3) New Hope's role and limitations regarding the exchange of information related to conditions of a surrender. Dkt. No. 1-6 at p. 3. However, New Hope has fully refused to comply with §421.3(d).

Providers of Adoption Services Removed From OCFS Website

44. In 2018 and 2019, OCFS did not disapprove any adoption program in New York State. In 2018 and 2019, approximately twelve authorized agencies with perpetual authority were removed from OCFS' website because they voluntarily no longer operated an adoption program. None of these authorized agencies were asked to or pressured by OCFS to close to due to their religious beliefs or non-compliance with 421.3(d). These agencies included agencies both faith-based and secular agencies.

45. In addition, approximately five agencies were removed from OCFS' website for a lack of corporate authority. Two others were removed because they closed in response to losing Hague accreditation, and two others were removed because they changed names.

Recusal and Referral Policy

46. OCFS does not believe that allowing an authorized agency to "recuse and refer" qualified applicants based on their protected class is an adequate alternative to a generally applicable anti-discrimination rule.

47. Such a policy would message to LGBTQ individuals that they are second-class citizens. This state-sanctioned disapproval of same-sex relationships disrespects and further marginalizes a historically disadvantaged population.

48. Under a recuse-and-refer policy, families turned away from one agency would need to seek out an agency willing to serve them—potentially at great time and expense and potentially exposing them to further harmful discrimination in the process. Without a universally applicable non-discrimination requirement, it is possible that there would be no adoption providers willing to serve them.

49. Although each local department of social services operates an adoption program, these programs only place children freed for adoption from the foster care system. A prospective adoptive parent seeking to adopt a child outside of the foster care system could not receive a child from the local department of social services.

50. New Hope exclusively facilitates domestic adoptions of newborns, infants, and toddlers. New Hope is not a public foster care agency and is not authorized to place foster children—that is, children in the custody and guardianship of the Commissioner of a local department of social services—for adoption in New York.

51. Even if there are agencies willing to work with same-sex and unmarried couples, a recuse-and-refer policy would nonetheless disadvantage these families. Typically, agencies that facilitate domestic adoptions of newborn infants outside of foster care have a greater number

of prospective adoptive parents than children in need of placement, resulting in waiting lists. Under recuse-and-refer, same-sex and unmarried couples turned away from agencies like New Hope would be segregated and funneled to the smaller subset of agencies willing to work with them, making waiting lists at those agencies longer and the likelihood of placement slimmer.

52. A recuse-and-refer policy diminishes the number of children available to same-sex and unmarried couples by reducing the number of agencies willing to serve them. Authorized agencies including New Hope are authorized to accept custody and guardianship of children; the authorized agency then chooses with whom to place the child, executes the adoption placement agreement, and must consent to finalize the adoption. Accordingly, prospective adoptive parents who are categorically rejected by an authorized agency lose the ability to adopt the children in that agency's custody and guardianship. Thus, the likelihood that a prospective adoptive parent will receive a child for an adoptive placement depends on the number of children in the custody and guardianship of the authorized agencies willing to work with them, not the number of children available for adoption statewide.

53. This concern is particularly acute because of the disproportionately high rates at which same-sex couples adopt.

54. In fact, New Hope's method of turning away unmarried and same sex couples through its "recusal and referral" policy prevents such couples from appealing such a decision by New Hope to OCFS. Couples who go through the application process at an agency and are not approved can appeal that denial to OCFS. However, by preventing unmarried and same sex couples from participating in the application process, New Hope's "recusal and referral" policy effectively leaves such couples with no avenue by which to challenge New Hope's action.

Dated: October 8, 2021
Rensselaer, New York

Carol McCarthy /s/
Carol McCarthy

McCarthy Exhibit A

Gilman, Susan (OCFS)

From: Stupp, John (OCFS)
Sent: Saturday, October 17, 2009 9:40 AM
To: 'email@adoptionplususa.org'
Cc: Rivera, Brenda (OCFS); McCarthy, Carol (OCFS); Larrier, Cheryl (OCFS); Gilman, Susan (OCFS); Carson, Charles (OCFS)
Subject: RE: Adoption Plus, Inc./Denial of Application
Attachments: _1, letter (DRAFT) to Shari Brown.doc

To Anatoliy Garmash and Valera Garmash

I have been advised by Carol McCarthy of the OCFS New York State Adoption Service (NYSAS) that she has yet to receive a response from Adoption Plus, Inc. to the email dated October 14, 2009 noted below. This email, of which OCFS has confirmation Adoption Plus, Inc. received by your auto reply on the date it was sent, chronicles the unsuccessful efforts made by OCFS to communicate with your agency regarding your application for an extension of authority to operate an adoption program in the State of New York.

These efforts include two unsuccessful attempts by OCFS staff to hand deliver documents at Adoption Plus, Inc.'s office during normal business hours (office locked).

An attempt was made by OCFS to schedule with Adoption Plus, Inc. a date and time your agency would be available in your own office to receive delivery of documents from OCFS. Such plan was unsuccessful because of Adoption Plus, Inc's failure to follow through with OCFS. Efforts by OCFS staff to contact Adoption Plus, Inc. to establish another date and time anyone from your agency would be in the agency's place of business were not successful because of Adoption Plus, Inc.'s failure to return OCFS calls.

Several phone calls, faxes and emails were placed and sent by OCFS New York City Regional Office (NYCRO) staff and OCFS NYSAS staff to agency phone numbers, fax numbers and email addresses provided by Adoption Plus, Inc. Aside from the one phone call from your agency noted below that involved our unsuccessful efforts to see anyone from Adoption Plus, Inc. in the agency's office and the auto reply noted above, Adoption Plus, Inc. did not respond to any of our calls, faxes or emails.

As you are very aware, the reason for OCFS' efforts to contact Adoption Plus, Inc. relates to the very fundamental issue of the agency's continued authority to operate an adoption program. It is of the highest consequence and import to Adoption Plus, Inc. Your refusal to communicate and the manner you operate your office are unacceptable, unprofessional and constitute additional reasons for the decision by OCFS to deny your application for an extension of your authority to operate an adoption program in the State of New York.

To be clear, as reflected in the attached letter dated September 28, 2009, the application of Adoption Plus, Inc. for an extension of its authority to operate an adoption program in the State of New York has been denied for cause. This is the final administrative decision of OCFS. As stated in the letter dated September 28, 2009, you were directed to immediately cease intake of new clients. The letter states that you must provide OCFS with a close out plan. The letter also states what the close out plan must include. Given the behavior of your agency in the past couple weeks, OCFS is informing you that the close out plan in due to OCFS from Adoption Plus, Inc, is no later than COB October 30, 2009.

John E. Stupp
Assistant Deputy Counsel
OCFS

From: McCarthy, Carol (OCFS)

New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park

52 Washington Street
Rensselaer, NY 12144-2796

September 28, 2009

Anatoliy Garmash
Executive Director
Adoption Plus, Inc.
P.O. Box 297040
Brooklyn, New York 11229

Re: Application for Extension of Authority to Operate an Adoption Program

Dear Mr. Garmash:

The New York State Office of Children and Family Services (OCFS) has completed its review of the application of Adoption Plus, Inc. (API) for approval of its certificate of amendment extending the authority of API to operate an adoption program in the State of New York. This review included the review of documents submitted by API as part of its initial application for approval in 2005, documents submitted by API in 2008 and 2009 as part of its application for an extension of its authority to operate an adoption program in New York, responses submitted by API to requests for documentation and information from OCFS and API's client case records. OCFS also reviewed the API website (www.adoptionplususa.org) for information. In addition, OCFS based its determination on communications with the Office of Accreditation for the Hague Convention in the United States, licensing staff in the State of Texas and API clients.

Upon completion of this review, OCFS has determined that substantive programmatic, fiscal and legal deficiencies exist that warrant denial of the application of API for approval of an extension of authority to operate an adoption program in the State of New York.

The grounds for this denial are as follow:

I. API provided inaccurate and misleading information to the federal government, OCFS and the public regarding its adoption related activities.

A. Number of Approved Adoptive Parents and Number of Completed Placements.

1) API's REQUEST FOR APPROVAL TO OPERATE AN[D] ADOPTION PROGRAM IN NEW YORK (see Attachment A)

This document was submitted by API in December of 2008 as part of its application for extension of its authority to operate an adoption program in New York.

On page 11, API states that it has approved 6 applicants in New York and has approved 4 applicants from other states.

2) API's submission of Form 990-EZ Return of Organization Exempt From Income Tax – 2008 (see Attachment B)

This document was requested by OCFS as part of our fiscal viability review of API. The document, as provided to OCFS by API, was executed under penalty of perjury on April 15, 2009 by Anatoliy Garmash, the Executive Director of API.

On page 2, in response to the question that requested API to provide a description of what was achieved to carry out API's exempt purposes, API stated the following:

"UKRAINIAN AND POLISH PROGRAMS – SEVEN CHILDREN FROM UKRAINE AND & FOUR CHILDREN FROM POLAND WERE ADOPTED BY AMERICAN PARENTS"

ISSUE: In reviewing API's application for extension of its authority to operate an adoption program, OCFS did not initially accept the accuracy of the statements as presented by API in the above-referenced documents regarding API's activities. OCFS made further inquiries into the activities of API in regard to the number of applicants approved by API and the number of children placed for adoption by API. This included the review of all available API client case records and conversations with API staff.

As a result of these follow-up efforts, OCFS was advised in July of 2009 that, in fact, API had not completed any adoptive placements from any country (see Attachment C). By letter dated August 26, 2009, OCFS asked API to provide a list of all clients who have been approved as adoptive parents by API (see Attachment D). API responded in its letter dated September 12, 2009 and stated that: "Unfortunately, Adoption Plus, Inc. has not approved any prospective parents in accordance to OCFS regulations 18 NYCRR Part 421" (see Attachment E).

These inaccuracies and misrepresentations made by API to governmental agencies raise serious questions regarding the integrity of this agency.

B. Compliance with OCFS Record Collection and Maintenance Regulations.

1) API's PRELIMINARY REQUEST FOR APPROVAL TO DO BUSINESS IN NEW YORK (see Attachment F)

This document was submitted by API as part of its initial application for approval in 2005.

On page 5 API states that: "Detailed records on all prospective adoptive parents, adoptive parents and adoption circumstances will be maintained." "Electronic and hardcopy records will be made available to the Office upon request."

2) API's REQUEST FOR APPROVAL TO OPERATE AN[D] ADOPTION PROGRAM IN NEW YORK (see Attachment A)

This document was submitted in December of 2008 by API as part of its application for an extension of its authority to operate an adoption program in New York.

On page 6 API states that: "Detailed records on all prospective adoptive parents, adoptive parents and adoption circumstances are maintained."

3) API's NEW YORK STATE ADOPTION SERVICE ADOPTION AGENCY BUSINESS PLAN (see Attachment G)

This document was submitted in December of 2008 by API as part of its application for an extension of its authority to operate an adoption program in New York.

On page 2 API states: "Our management practices center around elements of meticulous recordkeeping, careful corroboration of information and expeditiously provided personal service."

On page 3 API states: "We comply with all State and Federal guidelines to be sure."

"Strict adherence to all regulatory requirements is a constant priority. The Standard of Practice for Adoption Services outlined in 18 NYCRR Part 421 are satisfied through our internal compliance procedures and our close, ongoing relationship with our outside counsel – adoption lawyers."

ISSUE: As reflected in more detail in section IV of this letter, contrary to the repeated representations provided above, API has woefully

failed to complete and maintain records in compliance with OCFS regulations.

C. Scope of Services

Since applying for initial approval and continuing through its application for an extension of its authority to operate an adoption program in the State of New York, API has held itself out to OCFS and the public as an agency providing adoption services, including home studies and post placement supervision. Such representations are reflected on pages 6 and 7 of API's 2005 PRELIMINARY REQUEST FOR APPROVAL TO DO BUSINESS IN NEW YORK STATE (IN-STATE) (see Attachment F); in pages 1-3 OF API's 2005 ADOPTION PLUS, INC. POLICIES AND PROCEDURES (see Attachment H); in pages 1 and 2 of API's SERVICE AND FEE SCHEDULE (12/05) (see Attachment I); in pages 7 and 8 of API's 2008 REQUEST FOR APPROVAL TO OPERATE AN[D] ADOPTION PROGRAM IN NEW YORK (see Attachment A); and in pages 2 and 4 of API's 2008 NEW YORK STATE ADOPTION SERVICE ADOPTION AGENCY BUSINESS PLAN (see Attachment G). In addition, on the API website (www.adoptionplususa.org), it states "International child adoption agency Adoption Plus, Inc. provides Home Study and Post Placement services for families living in New York and international child adoption services in all 50 states of America" (see attachment J).

ISSUE: In 2005, OCFS relied on the above-referenced representations by API that it operates an adoption agency that performs such adoption services as home studies and post placement supervision. In the process of reviewing its application for an extension of authority, OCFS was under the belief in 2008 and 2009 that API continued to provide such services.

However, when API was pressed by OCFS to explain its compliance with the Hague Convention by letter dated June 25, 2009 (see Attachment K), API gave an explanation that it was exempt from the Hague Convention because it did not provide adoption services. API stated on page 1: "It is still not completely clear to us why our agency is required to be approved under the Hague Accreditation. There are a few reasons why we feel that our agency should not be required to register." API went on to state that the agency does not conduct the following activities: "Performing a background study on a child or a home study on a prospective adoptive parent(s) until final adoption which is done by the independent licensed social workers. ,,, Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption because this is done by the respective Consulate for the countries from which the prospective parents are adopting."

API attempted to leave the impression that all API does is to help prospective adoptive parents collect necessary documents and arrange them in the required format (see page 2 of Attachment K).

The position presented by API in its June 25, 2009 letter regarding the scope of services provided by API is diametrically opposed to what the agency previously represented to OCFS and has presented to the public. The distinction between an agency that provides home studies and post placement supervision and one that does not is quite dramatic. If, in fact, API did not plan on providing adoption services, that would have altered OCFS' decision to approve API in 2005. If API provided adoption services upon its initial approval but thereafter ceased doing so, it did not advise OCFS of this significant change in its program until June of 2009, after it had applied for an extension of its authority to operate an adoption program that OCFS had understood to provide adoption services. Also disturbing is that after telling OCFS that it no longer provides adoption services in the form of home studies or post placement supervision, API continued to hold itself out to the public as dong so on its website. This, again, raises serious questions regarding agency credibility.

Another issue of credibility relates to the statement in the API's website that the agency has the capacity to serve clients in all 50 States. Upon information and belief, API is not licensed or approved in any State other than New York.

II. Failure by API to protect the rights and interests of its clients.

OCFS regulation 18 NYCRR 421.2(c) provides that the rights of children and adoptive families must be respected and protected through responsible agency administration.

ISSUE: API advertises in its website (www.adoptionplususa.org) as operating an international adoption program involving the placement of children from Poland to the United States (see Attachment I). In its correspondence dated June 25, 2009 and September 12, 2009 and correspondence received by OCFS on August 24, 2009, API referred to its efforts to place children into the United States from Poland (see Attachments K, E and M).

Both the United States and Poland are members of the Hague Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption (Hague Convention). The United States Department of State website for the Hague Convention sets forth a description of the steps that must be taken for a child to be placed from Poland. One of the primary steps is to choose a Hague accredited adoption service provider in the United States (see Attachment N). While upon information and belief based on

communication with the Council on Accreditation for the Hague Convention in the United States, API has an application for accreditation pending with the Council. API is not a Hague accredited agency in the United States (see Attachment O).

On several occasions, including OCFS' letter dated May 11, 2009, OCFS asked API for its plans regarding seeking Hague Convention accreditation and its authority to provide services in Hague Convention countries (see Attachment P). API's response dated June 25, 2009 was that it was their position that it did not believe that the agency had to be accredited since it did not provide adoption services under the Hague Convention (see Attachment K). API claimed that it does not do home studies or post placement supervision. API also stated that its representative in Poland had filed the necessary paperwork with adoption authorities in Poland.

OCFS pursued this issue in its letter dated August 26, 2009 in which OCFS asked API what agency in the United States was involved in those cases in which API clients were seeking a placement from Poland (see Attachment D). API's response in its letter dated September 12, 2009 was "We are not sure of what Hague Accredited agencies the prospective adoptive parents work with in the U.S. All of these clients are not residents of the state of New York" (see Attachment E). API then gave an explanation of the adoption process involving Poland that did not reference a Hague accredited agency in the United States. This response is also inaccurate because one of the families for which the agency is seeking a placement from Poland is the Roberto/Magnotta family who are New York residents.

It is inconceivable that API is not aware of whether its clients are working with a Hague accredited agency. Again, in its description of the Polish adoption process, API failed to take into consideration the necessity for the involvement of a Hague accredited agency in the United States.

The API website (www.adoptionplususa.org) does not address the requirement for prospective adoptive parents to comply with the Hague Convention in regard to the placement of children from Poland or from any other Hague Convention country into the United States.

Upon information and belief, following the disruption of the placement of a child from the Ukraine, API advised the Roberto/Magnotta family that they could pursue a placement from Poland. OCFS asked the Roberto/Magnotta family the following questions: "In regard to any or your discussions with Adoption Plus, Inc and a potential placement from Poland, has anyone from Adoption Plus, Inc. discussed with you that Poland is a member of the Hague Convention? Has anyone from Adoption Plus, Inc. discussed with you the need to work with a Hague accredited agency or primary provider in the United States in regard

to adopting from Poland?" Raymond Roberto responded to those questions in an e-mail dated September 3, 2009 saying "No, They have been acting like the person in Poland works for them." (see Attachment Q).

API has failed to satisfactorily advise its clients of the need to comply with the Hague Convention in the United States in order to adopt a child from Poland or any other Hague Convention country. API has provided inaccurate information to its clients on the steps necessary to adopt from a Hague Convention country. It appears that API lacks an adequate understanding of the standards necessary for a person to adopt from a Hague Convention country. These deficiencies result in the failure to protect the rights and interests of the agency's clients.

III. Failure by API to comply with home study and approval requirements

OCFS regulation 18 NYCRR 421.15(c)(8) provides that for the completion of a home study of a person seeking approval as an adoptive parent there must be a response from OCFS to the federal and State criminal history record check on the applicant and all other persons over the age of 18 who reside in the home of the applicant as mandated by section 378-a(2) of the Social Services Law and OCFS regulation 18 NYCRR 421.27. Such response is in the form of a criminal history record summary issued by OCFS.

As will be discussed in more detail in section IV of this letter, OCFS requested that API provide OCFS with a complete copy of the case record of each client of API. This API did in the documents that are enclosed in this letter as Attachment R 1-7.

ISSUE: The home study prepared on behalf of API by Sandra Sabbioni LMSW dated April 28, 2008 for Vladislav Chernyshov and Zhanna Chernyshova states on page 7 that criminal history record checks were completed with OCFS on March 24, 2009 and "no record of criminal abuse, violence or criminal history was found" (see Attachment R-1).

However, the file provided to OCFS by API for the Chernyshov/Chernyshova family did not include a criminal history record summary issued by OCFS (see Attachment R-1).

In addition, a review of the official repository maintained by OCFS that records all requests for criminal history record checks received by OCFS revealed that OCFS had not received a request for a criminal history check for either Vladislav Chernyshov or Zhanna Chernyshova (see Attachment S).

IV. API has failed to comply with OCFS regulatory standards dealing with the collection and maintenance of records

OCFS regulation 18 NYCRR 421.3(c) provides that authorized agencies providing adoption services must "maintain appropriate records demonstrating compliance with agency policies and applicable department regulations; maintain a written record for each child and adoptive applicant containing information which documents decisions and plans of action".

OCFS regulation 18 NYCRR 421.11(i) provides that authorized agencies operating an adoption program must "develop a record for each person inquiring about adoption which contains: (1) a dated record of the inquiry, whether received by mail, telephone or in person; (2) a dated copy of the invitation to an orientation session; (3) a dated copy of the written acknowledgement of the inquiry; and 4) a dated record of all further communication, whether by letter, telephone or in person".

OCFS regulation 18 NYCRR 421.11(j) provides that each authorized agency operating an adoption program must "retain such record, if no completed application is filed, for 12 months after the last communication."

OCFS regulation 18 NYCRR 421.12(b) provides that each authorized agency must develop a record for each adoptive applicant that includes: "(1) record of inquiry maintained in accordance with (18 NYCRR 421.11(i)); (2) the application, medical report and references; (3) summary of interviews with applicant and of visit to applicant's home; (4) summary of agency conference which clarifies the basis for each decision that affects the applicant's status with the agency; and (5) copies of all correspondence with the applicant".

OCFS regulation 18 NYCRR 421.15(c) provides that an authorized agency must advise applicants for approval that before a home study can be completed the following documentation is required: (1) medical report; (2) references; (3) if married, proof of marriage; (4) if married and separated, proof of separation; (5) if previously married, proof of dissolution of marriage; (6) evidence of employment and income; (7) SCR clearances; (8) criminal history record summary; and (9) sworn statement of criminal convictions.

ISSUE: By letter dated May 11, 2009, OCFS requested API to provide "a copy of the entire case file for all current clients of Adoption Plus, Inc." (See Attachment P). By letter dated June 25, 2009 (Attachment K), API produced the case record for one family (Maddoux) which did not contain the application the family filled out on July 6, 2008 (see Attachment R-2).

By e-mail dated August 14, 2009, OCFS requested that API provide OCFS with copies of all of its clients' files (see Attachment T). On August 24, 2009, OCFS received API's response (see Attachment M). The transmittal letter identified the cases that were provided (see Attachment R1-7). In addition, API notified OCFS that "The remaining cases are placed on hold. All documents have been returned to the clients".

By letter dated August 26, 2009, OCFS requested confirmation that the package of records submitted by API on August 24, 2009 represented "a complete set of all of the files in the possession of Adoption Plus, Inc. of all clients, whether residents or non-residents of New York since the establishment of the agency in December of 2006" (see Attachment D).

By letter dated September 12, 2009, API confirmed that the package of records received by OCFS on August 24, 2009 "represents a complete set of all client documents located in our office up to that day" (see Attachment E).

The records maintained by API are grossly inadequate and incomplete.

The case records provided by API do not contain any of the documentation required by OCFS regulation 18 NYCRR 421.11(i)(1)-(3).

The case record material provided by API does not contain one notation of an in person or telephonic communication between API and any of its clients. There is no record of any letter or e-mail communication between API and any of its clients. It is highly unlikely that since the inception of the agency in December of 2006 API never had such communications. It gives rise to the conclusion that API violated OCFS regulations 18 NYCRR 421.11(i)(4) and 421.12(b)(5).

By its own admission, API stated that it returned the entire case files on two families (Kholodenko and Narodnitskiy) because the cases were closed. This act violates OCFS regulation 18 NYCRR 421.12(b) if an application had been taken or OCFS regulation 18 NYCRR 421.11(j) if an application had not been taken. The return of those case files also prevented OCFS from evaluating compliance by API with New York State statues and regulations in regard to those clients.

The case files that were provided by API had to have documentation that supported the findings in the home studies as required by OCFS regulation 18 NYCRR 421.15(c). With regard to the New York residents for whom home studies were found in the case records provided by API to OCFS, the case record for the Chernyshov/Chernyshova family lacked the medical report,

references, proof of marriage, proof of dissolution of marriage, evidence of employment, and the criminal history record summary. The case record for the Roberto/Manotta family lacked references, proof of dissolution or marriage and the criminal history record summary (see Attachment R-3). Comparable deficiencies were noted in regard to the case files for the non-residents of New York.

V. There is the absence of public need for the continued operation of API.

OCFS regulation 18 NYCRR 482.1(a)(6) provides that as part of an application for a certificate of amendment of an adoption program subject to OCFS approval, the applicant must demonstrate that there is a public need for such program.

API has had the authority to operate an adoption program since the filing of its certificate of incorporation on December 6, 2006 (see Attachment U).

ISSUE: Since API assumed the statutory authority to operate an adoption program in the State of New York on December 6, 2009 it has not approved a single person as an adoptive parent (see Attachment E). In addition, API has not placed a single child for adoption either domestically or internationally (see Attachment C).

By letter dated August 26, 2009, OCFS requested that API provide a list of all past and present clients (see Attachment D). API responded in its letter dated September 12, 2009 (see Attachment E). The list of all past and present clients, as submitted by API, indicates that since December 6, 2006, API has had 9 families as clients.

Since API returned the entire case files it has on two families (Kholodenko and Narodnitskiy), OCFS is unable to ascertain the level of involvement by API with these families. With regard to the Bowman family the only document provided by API was the SCR clearance form (see Attachment R-7).

Of the 9 families, one family is on hold (Roberto/Magnotta). This family has filed a complaint with OCFS regarding API. Five (5) families are in a closed or aborted status. API lists three (3) families that are in an active status. Of those, only the Chernyshov/Chernyshova family resides in the State of New York.

API has failed to demonstrate that there is a public need for the adoption program it has had the authority to operate for the past 2 and a half plus years.

VI. API failed to demonstrate the fiscal viability of its adoption program.

OCFS regulation 18 NYCRR 482.1(a)(7) requires that any agency seeking OCFS approval of an amendment of its certificate of incorporation to extend its authority to operate an adoption program must provide information and data with reference to the financial resources and sources of future revenue of the program in order for OCFS to determine that there are adequate finances to properly conduct the program.

ISSUE: OCFS fiscal staff reviewed the financial information provided by API and concluded that API is not fiscally viable. The basis for this determination is set forth in Attachment V.

This decision to deny API's application for approval is the final administrative decision of OCFS in accordance with OCFS regulation 18 NYCRR 483.3.

Upon receipt of this letter, API is directed to immediately cease intake of new clients.

Within 30 days from receipt of this letter, API must submit a close out plan to the attention of Cheryl Larrier of the OCFS New York City Regional Office. The close out plan must include:

- API's plan to inform clients of the impending closure of API.
- API's plan to reimburse unexpended fees in the possession of API to current clients and the dissolution of agency assets.
- Any changes to the list of clients provided in your letter dated September 12, 2009.
- API's plan with another authorized adoption agency to store, maintain and retrieve client records.

Sincerely,

for
John E. Stupp
Assistant Deputy Counsel

Enclosure

cc: Brenda Rivera
Carol McCarthy
Cheryl Larrier

New York State
Office of
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February 19, 2010

Lisa Aschkenasy
Court Attorney
Family Court of the State of New York
60 Lafayette Street
New York, NY 10013

Re: Adoption of Joshua (DOB: [redacted]/08)
Docket No: A-6830/09

Dear Ms. Aschkenasy,

I am responding to your letter dated February 18, 2010 in which you asked several questions regarding the closing of Advocates for Adoption, Inc. (AFA). AFA never submitted a formal written close out plan with the Office of Children and Family Services (OCFS). The following will give you background information regarding the close out efforts involving AFA.

In its denial letter dated January 23, 2008, OCFS directed AFA to cease accepting new clients and to provide a close out plan that included a current list of clients and status of its cases. By letter dated February 14, 2008, counsel for AFA partially complied with the request for a close out plan by submitting a list of current clients, along with the status of their cases. The adoptive parents in the above referenced proceeding were included in this list with a notation that the child had been placed with them on January 28, 2008. In accordance with the State Administrative Procedure Act, AFA was legally authorized to continue to operate as an adoption agency until its time period to challenge the OCFS decision expired (May 30, 2008).

Following issuance of the denial letter, AFA provided OCFS with periodic updates on the status of its existing clients. During this period OCFS provided additional direction to AFA regarding the content of a close out plan, including the transfer of AFA client cases to approved adoption agencies. OCFS provided a list of potential agencies that could accept AFA's clients. OCFS was informed that AFA was in negotiations with a New York approved adoption agency to transfer clients. However, we were subsequently notified that those negotiations failed. OCFS required AFA to communicate with its clients regarding the State's actions and to respond to any questions raised by its clients on its status.

During this period, OCFS communicated with AFA's counsel to inquire into how the agency was going to deal with clients who had pending adoptions in regard to the receipt of surrenders and the submission of consents to the adoption. It was our understanding that AFA was in contact with other agencies on the issue of post placement supervision. It was also our understanding that AFA continued to work with counsel for adoptive parents to provide its clients with documentation necessary for the completion of pending adoptions.

On May 23, 2008, AFA commenced an Article 78 proceeding challenging the denial of its application for an extension of its corporate authority. Its request to enjoin OCFS from enforcing the January 28, 2008 denial was not granted. OCFS consented to extending AFA's authority to provide adoption services to those persons who were AFA clients on or before January 28, 2008. The extension was for an initial period until July 31, 2008 and was periodically extended while the Article 78 proceeding was pending before the Supreme Court. During this period, AFA had the authority to provide adoption services to existing clients, such as the adoptive parents in this case.

Following the commencement of the Article 78 proceeding, AFA attempted to transfer its cases to another authorized agency, but those negotiations also failed. In June of 2008, OCFS offered to settle the Article 78 proceeding with a proposal that would have afforded AFA a time limited period to complete pending cases, including a close out plan. Prior to receiving a decision from AFA on the OCFS settlement offer, the Supreme Court on December 30, 2008 dismissed AFA's Article 78 petition.

Following the court's decision, OCFS made one final effort to settle the case in a manner that enabled an orderly transition of clients. Those efforts were not successful. On February 9, 2009, AFA filed a notice of appeal of the December 30, 2008 decision of the Supreme Court. No stay has been granted and the appeal is pending.

In January of 2009, OCFS was informed verbally by Family Connections that AFA had contacted that agency for the purpose of Family Connections taking over post placement supervision of cases of AFA clients. OCFS confirmed that Family Connections could provide that service. OCFS requested that Family Connections provide OCFS with a copy of any agreement or understanding it had with AFA. In February of 2009, OCFS was verbally informed by AFA that it was sending open cases to Family Connections and was notifying its clients of AFA's closing.

By letter dated February 6, 2009, OCFS requested Family Connections to send OCFS a list of clients that have been transferred to that agency from

AFA. That request was made to enable OCFS to forward subsequent criminal arrests to Family Connections. By letter dated February 19, 2009, OCFS requested that AFA provide OCFS with an updated list of clients, along with the status of their cases. In addition we requested that AFA provide OCFS with any written notification sent by AFA to its clients.

By letters dated April 8, 2009 and May 22, 2009, Family Connections notified OCFS of twenty-one AFA clients that had been transferred to that agency. Those letters did not reference the adoptive parents in the above referenced adoption proceeding.

OCFS did not and has not to date received a copy from either AFA or Family Connections of an agreement of understanding regarding the transfer of AFA clients to Family Connections. OCFS is not aware that AFA has transferred any other clients to an authorized agency other than Family Connections. OCFS is not aware that another authorized agency has been monitoring the clients not otherwise transferred to Family Connections.

In those cases, such as the matter pending before the court, where the child was placed while AFA continued to have the legal authority to operate an adoption program, it was our understanding that AFA was going to work with the counsel for the adoptive parents to complete the adoption. It has been and continues to be the position of OCFS that the termination of the authority of AFA to operate an adoption program in the State of New York has no legal effect on the surrenders accepted by AFA prior to its loss of authority. Since the termination of AFA's authority to operate an adoption program in New York, OCFS has approved several Interstate Compact applications involving children surrendered to AFA prior to such termination.

The purpose of a close out plan is to address such issues as post placement supervision and the transfer of adoption records. It is not intended to result in the transfer of guardianship and custody of a surrendered child to another authorized agency.

To date, although it lacks the authority to place out children for adoption, AFA is still an active corporation. It has not been dissolved. With the possible exception of cases referenced in the letters noted above from Family Connections, we are not aware that it has transferred its clients' records to another agency.

You asked if we were aware of a legal mechanism for transferring legal custody of a child from one authorized agency to another. We are assuming that you are referring to when an authorized agency has assumed guardianship and custody through a surrender. The only way we are aware of

to address that situation is for the parties to the surrender to agree to a revocation of that surrender and then for the birth parent(s) to execute a new surrender document with another authorized agency.

I trust that this responds to your inquiry. Please contact this office if you have any further questions.

Sincerely,

John E. Stupp
Assistant Deputy Counsel
Division of Legal Affairs

cc: Susan Gilman

New York State
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June 19, 2008

Marc A. Stadtmauer, Esq.
Stadtmauer & Associates
Attorneys at Law
230 Park Avenue Suite 2525
New York, New York 10169

RE: Advocates for Adoption, Inc.

Dear Mr. Stadtmauer:

I am responding to your letter dated May 20, 2008. Let me premise this letter by saying that it is unfortunate that your clients were not able to negotiate an agreement with Adoption House. Prior to the decision by Adoption House not to enter into an agreement with Advocates for Adoption, Inc., (Advocates) both program and legal staff from the Office of Children and Family Services (OCFS) participated in conference calls with Adoption House to answer its questions regarding the issue of the transfer of clients from Advocates to Adoption House. During those calls, OCFS consistently encouraged Adoption House to work with your clients to reach a mutually acceptable agreement.

OCFS rejects and denies the allegations and assertions you made in your letter regarding the actions taken by the State of New York in regard to its decision to deny your clients' application, which is now in litigation. Therefore, I am limiting my response to your request that OCFS reconsider its denial of your clients' application for an extension of Advocates' authority to operate an adoption program in New York State.

Again, OCFS will not grant your request for reconsideration. The terms you offered are not acceptable. What you offer is basically the same as your clients offered in 2002 and failed to implement. We do not have any confidence that your clients would now operate a program in conformance with State standards.

However, OCFS is interested in settling this matter in a manner that will assist current adoptive parents to compete the adoption process either through Advocates or with another approved authorized agency. To that end, OCFS is willing to settle this matter under the following terms:

1. Advocates will be authorized to continue to provide adoption services only for those clients listed on the client list provided to OCFS in April of 2008 subject to the conditions noted below.
2. Advocates' clients will be divided among three categories: (a) adoptive parent(s) with a child waiting finalization; (b) adoptive parent(s) assigned a child waiting placement; and (c) adoptive parents who are approved as adoptive parent(s) waiting for an assignment.
3. Advocates will be able to serve such clients and to receive payments under the terms and conditions of agreements entered into by Advocates and the client prior to January 23, 2008, until the earlier of either: (a) the completion of the adoption; (b) the voluntary withdrawal by the adoptive parent as a client of Advocates; (c) the involuntary termination of the client's approval as an adoptive parent by Advocates based on the failure of the client to comply with applicable statute or regulation ; or (d) January 1, 2009. For the purposes of this settlement proposal, completion of the adoption means the court granting an order of an adoption in regard to an individual assignment situation and does not include potential subsequent placements of siblings or half siblings.
4. Advocates will continue not to accept new clients.
5. Advocates will provide OCFS on the date the settlement agreement is completed with an update of the April 2008 client list showing the current status of remaining existing clients of Advocates.
6. Advocates will provide OCFS with monthly reports on the status of the clients noted in #1 and will afford OCFS unannounced and unrestricted access to the offices, books, records and staff of Advocates.
7. Advocates will revise its website to include the date of closure of the agency and that it may not accept any new clients.
8. Advocates will submit an acceptable plan for the transfer of agency records to an agency or person acceptable to OCFS.
9. Neither Advocates nor its current staff will otherwise place out children for adoption, as that term is defined in the Social Services Law, and/or charge or receive any fee in violation of section 374(6) of the Social Services Law.
10. Advocates and Judith Lee will withdraw with prejudice their Article 78 proceeding against the New York State Office of Children and Family Services and Gladys Carrion in her capacity as Commissioner of OCFS.

OCFS believes that this framework is a reasonable resolution to this matter; and is prepared to move forward with it to prevent any gaps in services to your existing clients.

Sincerely,

John E. Stupp
Assistant Deputy Counsel

Cc: Garvin Smith AAG
Laura Velez
Lee Lounsbury
Brenda Rivera
Cheryl Larrier
Janice Shindler
Lee Prochera

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January 23, 2008

Dr. Judith S. Lee
Executive Director
Advocates for Adoption, Inc.
362 West 45th St.
New York, N.Y. 10036

Dear Dr. Lee,

The New York State Office of Children and Family Services (OCFS) has completed its review of the application of Advocates for Adoption, Inc. (AFA) for approval of the certificate of amendment reauthorizing AFA's authority to operate an adoption program in New York State. This review included a site visit and a program and fiscal review. The program review included, but was not limited to, review of agency case records, an investigation of current complaints against AFA as well as current compliance with the requirements set forth in prior corrective action plans.

Upon completion of this review, OCFS has determined that substantive programmatic deficiencies exist which warrant denial of AFA's application for approval. The grounds for this denial are as follows:

1. **Gennaro/Gardner Complaint**

OCFS received a complaint from Rosario Gennaro and Alex Gardner regarding AFA. Mr. Gennaro and Mr. Gardner were approved as adoptive parents by AFA.

Following the receipt of the complaint, OCFS requested the entire case record from AFA regarding these adoptive parents. OCFS also requested clarification from AFA regarding certain aspects of this complaint.

Issue #1 Payment of Bail

The adoptive parents contacted OCFS and raised issues relating to their experiences with AFA, in particular in regard to a prospective adoptive placement in the State of Pennsylvania. The adoptive parents raised the issue of being requested by the birthmother's attorney to pay $5,000 for the bail of the adult son of the birthmother of the unborn child they were anticipating receiving for adoption. According to the adoptive parents, they were expected to pay for the bail as part of the fees associated with the prospective adoptive placement of the birthmother's unborn child. The adoptive parents requested guidance from AFA and AFA advised the adoptive parents to make the payment for the bail of the birthmother's son.

According to the adoptive parents, AFA told them that the payment was legal and that if they failed to make the payment, it could jeopardize the prospective adoption. The adoptive parents thereafter agreed to the payment and requested that AFA inform them regarding the status of the payment. The adoptive parents did not receive any further information from AFA on the payment of the birthparent's son's bail. The information provided by the adoptive parents is set forth in the affidavit of Rosario Gennaro (see Attachment "A")

By e-mail dated March 1, 2007, OCFS requested AFA respond to certain specific questions regarding the Gennaro/Gardner complaint, including if AFA rendered an opinion on the appropriateness of the use of the adoptive parents' funds for bail (see Attachment "B".

AFA responded to OCFS in a letter dated March 1, 2007 from Dr. Judith Lee, Executive Director of AFA (see Attachment "C"). Dr. Lee stated that AFA "did not advise the prospective adoptive parents regarding the birthmother's request for $5,000 to pay her son's bail". She also stated that "(o)n August 8, 2006 I learned about the birthmother's son and his being in jail when I read the e-mail sent by Rosario at 10:12 PM on August 7th". The Executive Director of AFA stated that "I expressed concern about this but he [Steven Dubin, the birthmother's Pennsylvania attorney] indicated it would not be a problem because it would not involve any expense to the adoptive parents".

a) OCFS regulation 18 NYCRR 421.2 (c) requires an authorized agency such as AFA to respect and protect the rights of adoptive families through responsible agency administration.

The payment of the $5,000 for the bail for the birthmother's son by the adoptive parents was not an allowable adoption expense in accordance with the standards set forth in section 374(6) of the Social Services Law (SSL). Such payment would have resulted in the denial by OCFS of the application for Interstate Compact on the Placement of Children (ICPC) approval had the placement of the child born in Pennsylvania taken place. Such denial would have been required by section 374-a of the SSL. The basis for such a decision by OCFS is set forth in the letter dated March 2, 2007 from OCFS to Alexander Gardner and Rosario Gennaro (see Attachment "D").

b) As reflected in the AFA case record, the adoptive parents requested guidance from AFA on the subject of the payment of bail (see Attachments "E" and "F"). AFA either recommended that the adoptive parents pay the bail, as asserted by the adoptive parents, or did not advise the adoptive parent whether or not to pay the bail, as asserted by AFA. This equates to either AFA having provided the adoptive parents with incorrect guidance or failing to provide necessary guidance to its clients on a matter that was of vital significance to the potential interstate adoptive placement.

c) According to AFA's account of the bail payment issue, AFA relied on the position of the Pennsylvania attorney, Steven Dubin, that the payment was legal. Mr. Dubin was not the attorney for either AFA or the adoptive parents. AFA failed to provide necessary guidance to its clients. In addition, when the adoptive parents requested information on whether the bail payment was made, AFA failed to provide the requested information as required by OCFS

regulation 18 NYCRR 421.2(c) or such response was not recorded as required by OCFS regulations 18 NYCRR 421.3(c) and 18 NYCRR 421.11(i).

d) It appears that AFA relied on the opinion of the birthmother's attorney in Pennsylvania that the payment for the birthmother's adult son's bail was legal. AFA was previously warned by OCFS and its predecessor, New York State Department of Social Services (DSS), of the need to comply with New York law in regard to fees and the potential serious impact of non-compliance on applications for approval of interstate adoptive placements through the ICPC in the letters dated October 29, 1996 and August 25, 1999 from DSS and the letter March 14, 2002 from OCFS (see Attachments "G", "H" and "I"). The standards issued by OCFS relating to fees and ICPC approval have been in place for several years and available to AFA (see Attachment "J"). AFA was previously warned by OCFS not to rely on representations by out of state lawyers on whether a fee was allowable under New York law (see Attachment "K").

e) On January 8, 2006, the adoptive parents signed a document provided by AFA entitled "Overview of Possible Birthmother Expenses to be Paid by the Adoptive Family" (see Attachment "L"). The document states in part on page one: "All expenses must comply with Section 374(6) of the Social Services law: i.e. 'in connection with or as a result of her pregnancy or the birth of the child'". By its involvement in the payment of the birthmother's son's bail, AFA violated its own agreement with the adoptive parents.

Issue #2 Provision of Misinformation to OCFS

During the course of OCFS' investigation of this complaint, AFA provided OCFS with incorrect information. In AFA's letter dated March 1, 2007, (Attachment "C") OCFS was advised that AFA learned of the incarceration of the birthmother's son on August 8, 2006. However, AFA's case record includes an e-mail dated May 13, 2006 from Rosario Gennaro to AFA asking about the son's incarceration (see Attachment "M"). Also included in AFA's case file is a response from AFA dated May 15, 2006 (see Attachment "N").

Issue #3 Inaccuracy of AFA Progress Notes

The AFA progress notes of the circumstances surrounding the bail payment issue were not accurate. The entry for August 8, 2006 in AFA's progress notes states:

> "I received an e-mail dated 8/7/06 from Rosario indicating that Joanne [birthmother], her son and he and Alex all spoke. Joanne and her son are pleading to be provided with bail money. Their e-mail indicates that they want the bail money paid. I knew nothing about this until now" (see Attachment "O").

The e-mail sent by Rosario Gennaro on August 7, 2007 (Attachment "E") contained in AFA's case file did not reflect an interest on the part of the adoptive parents to pay the bail but reflected uncertainty of the events that were transpiring seeking guidance from AFA.

Issue # 4 Failure to Provide Services to the Adoptive Parents

The progress note for September 6, 2006 [in AFA notes is mislabeled "9/6/07"], addressed the point in time that AFA notified the adoptive parents of the failure of the Pennsylvania adoptive placement. The entry for that date in its entirety reads:

> "I spoke with Steve Dubin. He spoke to Joanne last Thursday. She told him she was fine but thought she might have the baby over the weekend as she was dilated and had dropped.
>
> Yesterday, he called her and she said that she had not yet had the baby.
>
> He spoke with her today she said she was feeling fine and asked him to send her money which he did. Later that day the hospital called to tell him that Joanne had the baby last Thursday.
>
> Steve called Joanne and confronted her. She told him she was planning to go through with it but when she saw the baby she changed her mind. I notified Alex & Rosario" (see Attachment "P").

There was no documentation in the record of any explanation given to the adoptive parents regarding the failed placement or the offer of counseling or other services upon relaying such devastating information to the adoptive parents.

Issue #5 Criminal Legal Fees

The "Agreement to Provide Legal Services" issued by the birthmother's attorney to the adoptive parents reflected an anticipated expense of "$3,500 Attorney Fees, Steven G. Dubin, Esquire (criminal)" (see Attachment "Q"). Per the affidavit of Rosario Gennaro, AFA advised the adoptive parents that it was legal to pay for the legal representation of the birthmother in a criminal case.

As explained in the OCFS letter dated March 2, 2007 (Attachment "D"), such a payment was not authorized pursuant to section 374(6) of the SSL and would have jeopardized the ICPC placement had the adoption proceeded. The AFA progress notes refer to AFA advising the birthmother's attorney on May 18, 2006 that the attorney's billable hours could not include criminal work.

However, the above referenced agreement executed on May 24, 2006 retained the reference to the adoptive parents paying for the criminal legal representation of the birthmother. There is no reference in the AFA case record that AFA ever advised the adoptive parents not to sign the agreement with such a fee or that AFA ever considered the implications in regard to the ICPC if such a fee were charged. As late as September 6, 2006, the adoptive parents believed that they could be liable for such expenses (see Attachment "R"). Either AFA failed to provide correct guidance to its clients or failed to provide any guidance on a vital issue in violation of 18 NYCRR 421.2(c) and 421.3(c).

2. Merling/Wythe Complaint

OCFS received a complaint from Andrew Merling and Douglas Wythe regarding AFA. Mr. Merling and Mr. Wythe were both approved as adoptive parents by AFA.

Following the receipt of the complaint, OCFS requested clarification from AFA of its involvement with the adoptive parents in regard to the authenticity of a home study under the letterhead of a New Jersey adoption agency that was transmitted by AFA to another New Jersey adoption agency. OCFS thereafter requested that AFA provide OCFS with AFA's complete case record in regard to these adoptive parents. In addition, OCFS spoke with staff of the two New Jersey adoption agencies involved in this matter, as well as the State of New Jersey adoption licensing staff.

Issue #1 Unauthorized alteration by AFA of another agency's home study

The adoptive parents provided OCFS with a copy of a home study under the letterhead of a New Jersey adoption agency, Growing Families Worldwide Adoption Agency, Inc. (Growing Families) (see Attachment "S"). The home study was purportedly signed on July 27, 2006 by Jodi Evanego who was then the Executive Director of Growing Families and by Magan Moskowitz who was then the Director of Social Work of Growing Families. The signatures of Ms. Evanego and Ms. Moskowitz were also apparently notarized. The home study references only Douglas Wythe as the adoptive parent. This home study will hereinafter be referred to as the "single adoptive parent home study". Also provided was a letter dated February 14, 2007 and signed by the Executive Director of AFA, Dr. Judith Lee. This letter transmitted the single adoptive parent home study to another New Jersey adoption agency, Better Living Adoption Services, Inc. (Better Living) (see Attachment "T"). The adoptive parents advised OCFS that they never reviewed or approved the single adoptive parent home study.

OCFS spoke with Jodi Evanego of Growing Families who advised OCFS that her agency had not prepared the single adoptive parent home study referenced above but that Growing Families had prepared a home study dated July 27, 2006 that reflected both Andrew Merling and Douglas Wythe as the adoptive parents (see Attachment "U"). This home study will hereinafter be referred to as the "two adoptive parent home study". The adoptive parents confirmed with OCFS that they had reviewed and signed the two adoptive parent home study.

OCFS contacted Better Living regarding this issue. By a letter dated September 13, 2007, that agency confirmed the receipt by fax of the single adoptive parent home study and the letter dated February 14, 2007 from AFA (see Attachment "V").

By letter dated July 31, 2007, OCFS advised AFA that it was investigating the Merling/Wythe complaint regarding the authenticity of the home study transmitted by AFA to Better Living in February of 2007. OCFS requested AFA to advise OCFS of AFA's role in the home study transmitted to Better Living and to provide any information and related communication and documentation on the issue (see Attachment "W").

By letter dated August 9, 2007, AFA responded by admitting that it had taken the two adoptive parent home study prepared by Growing Families (Attachment "U") and had altered its content (see Attachment "X"). The AFA response did not reference AFA seeking permission from Growing Families to alter the original home study and/or to use Growing Families' letterhead and signatures. The rational given by AFA for the alteration of the original Growing Families two adoptive parent home study was:

a) Because Better Living stated, and Growing Families confirmed, that Better Living had taken over Growing Families and that Growing Families was no longer licensed in New Jersey where the adoptive parents resided.

b) In the course of other conversations with Better Living AFA concluded that what AFA had been led to believe in the previous paragraph was not true. AFA was advised by Better Living that the adoptive parents had to have a brand new home study. This information made AFA "very upset".

c) Better Living did not seem to know how to prepare a home study for a same sex couple where only one person would be the adoptive parent and the other would be a household member. Because of AFA's several unsuccessful attempts to explain to Better Living how to complete a single adoptive parent home study, AFA sent the "reformatted" single adoptive parent home study to Better Living.

The letter dated August 9th from AFA went on to state:

> "Barbara [Fraley] was clearly told she would be getting the reformatted home study as a 'model' so that she could appropriately prepare the new home study for Merlin[g]-Wythe. It was never intended for this document to be used for any purpose other than educational. In fact, as already stated, we were told the Growing Families' home study was useless. Barbara was told the reformatted home study was not to leave her office and was to be destroyed immediately after she had read it and understood what to do. The reformatted home study was never in the AFA file because it was destroyed as soon as it was transmitted to Better Living."

There were no attachments to this letter.

By letter dated August 14, 2007, OCFS shared with AFA a copy of the single adoptive parent home study and the letter dated February 14, 2007 from AFA to Better Living. OCFS requested confirmation whether AFA had any documentation of the communications AFA allegedly had with either Growing Families or Better Living referenced in AFA's letter dated August 9, 2007. OCFS also asked AFA what AFA did when it first became aware of the issue raised in the Merling/Wythe complaint (see Attachment "Y").

By letter dated August 24, 2007, AFA responded (see Attachment "Z"). AFA repeated the need for a single adoptive parent home study, but did not provide a reason for such a need. Regarding OCFS' other questions, AFA responded:

"At some point after January 4, 2007, Ms Carter [an AFA employee] realized the home study would need to be revised so as to have only one adoptive parent with the other person being a household member. She immediately contacted Ms. Fraley and explained the need to do exactly that. Ms. Fraley seemed to not comprehend what Ms. Carter was trying to explain to her and on February 14, 2007, Ms. Carter faxed to her the reformatted home study. As previously stated this was sent so she would understand what to do. She was told to destroy it once the appropriate home study was prepared by her. We heard nothing from Ms. Fraley. This exchange was not documented in the case file as, at the time, it seemed to Ms. Carter to be a routine exchange of clerical information."

By e-mail dated August 28, 2007 OCFS requested final confirmation that the single adoptive parent home study provided to OCFS by the adoptive parents (Attachment "S") was the home study AFA stated that it had altered. OCFS also asked again whether AFA had any documentation of the communications AFA allegedly had with Better Living or Growing Families on this issue (see Attachment "AA").

By letter dated August 28, 2007, AFA confirmed that the single parent home study provided by the adoptive parents was the document "reformatted" by AFA and that aside from the February 14, 2007 letter, no other documentation existed regarding this issue (see Attachment "BB").

The violations and deficiencies arising from AFA's actions in regard to this complaint include:

a) The response provided by AFA in its August 9, 2007 letter to OCFS' inquiry regarding the Merling/Wythe complaint was both incomplete and inaccurate. A basis given in the August 9th letter why a single adoptive parent was necessary was that the Growing Families home study was no longer valid and that Better Living had informed AFA that a new home study was required. According to the case notes provided by AFA to OCFS, the issue of a new home study or an update to the prior home study did not arise until March 4, 2007; several weeks after the transmission of the reformatted home study by AFA on February 14, 2007 (see Attachment "CC").

AFA failed to inform OCFS in its letter dated August 9, 2007 of the actual reason why the two adoptive parent home study had to be converted to a single adoptive parent home study. It was because the adoptive parents were working with a birthmother in Louisiana and that the State of Louisiana did not permit same sex adoptions. The home study presented to the authorities in the State of Louisiana had to be modified not to reflect that both Andrew Merling and Douglas Wythe were adoptive parents, although both were approved as adoptive parents by AFA.

b) Despite the significance of the single adoptive parent home study to the prospective adoptive placement in Louisiana in February of 2007, the AFA case record contained no documentation of the communications that allegedly took place between AFA and either Better Living or Growing Families. Neither the single adoptive parent home study nor the February 14, 2007 transmittal letter signed by Dr. Judith Lee [not Ms. Carter] were in the case record provided by AFA to OCFS. This is a violation of OCFS regulations 18 NYCRR 421.2(c), 421.3(c) and 421.11(i).

c) The explanation given by AFA that it had to develop the "reformatted" single adoptive parent home study because Better Living did not seem to comprehend how to complete a single adoptive parent home study is questionable. According to the Executive Director of Better Living, that agency has been serving single, same sex couples for several years and has been in business for over 20 years (see Attachment "V").

d) The explanation provided by AFA that documentation of activities surrounding the creation and transmission of the altered single adoptive parent home study was not called for because it was a "routine exchange of clerical information" is not credible and it not supported by the facts. The transaction involved the taking of a final executed home study prepared by an agency other than AFA, physically altering the content of the home study, using the letterhead of the other agency and retaining the copy of the original signature of the staff of the other agency with the dates of execution and notarization.

AFA asserts that AFA cautioned Better Living about what had to be done with the "reformatted" home study. That it stressed the need to destroy the document once Better Living determined how to complete a single adoptive parent home study. There is no documentation that AFA followed up with Better Living whether it had destroyed the "reformatted" home study.

The only documentation of these transactions between AFA and Better Living, other than the single adoptive parent home study is the letter dated February 14, 2007 from AFA to Better Living. That letter was not included in the case record provided by AFA to OCFS. That letter is silent on the issue of destruction of the home study upon receipt. The letter was also significant enough to be signed by the agency's Executive Director, Dr. Judith Lee.

The February 14, 2007 letter states, in part: "Douglas will be the adopting as a single parent so the home study had to be revised for that purpose". AFA did not advise Better Living that the home study "has" to be revised to reflect a single adoptive parent. A reasonable reading of this letter is that the home study had already been revised and that it was revised to support the then impending Louisiana adoptive placement that disrupted, per AFA's progress notes, on February 26, 2007 (see Attachment "DD").

On June 29, 2007, OCFS spoke with Jodi Evanego who was the former Executive Director of Growing Families. Ms. Evaego informed OCFS that she was advised by Barbara Fraley of Better Living of the receipt of the single adoptive parent home study and the letter dated February 14, 2007 from AFA. Ms. Evanego stated that she called AFA regarding the issue and was told by Dr. Judith Lee that she would get back to Ms. Evanego. According to Ms. Evanego, she never again heard from AFA on this issue. The AFA case record provided by AFA to OCFS does not reflect these communications

The position of AFA that the single adoptive parent home study was merely a clerical exercise is also contradicted by the fact that AFA made a substantive change to the original two adoptive parent home study. The original home study performed by Growing Families (Attachment "U") approved Andrew Merling and Douglas Wythe "for the adoption of one newborn Caucasian child of either gender". The single adoptive parent home study that AFA admitted to altering

(Attachment "S") approved Douglas Wythe "for the adoption of one newborn Caucasian or Bi-racial newborn of either gender". The unborn child in Louisiana Mr. Merling and Mr. Wythe were hoping to adopt at that point in time was bi-racial per AFA progress note dated September 12, 2006 (see Attachment "EE").

The conclusion reached by OCFS in regard to this issue is either that AFA acted in a negligent manner in altering an original home study prepared by another agency without permission and released the document without adequate explanation, safeguards or follow-up protections against possible misuse or that the home study was purposely altered by AFA for use in the impending adoptive placement. Either situation would be a violation of OCFS regulation 18 NYCRR 421.2(c).

3. Michael and Tammy Farrell

This case came to the attention of OCFS during an on-site review at AFA of a random sample of cases selected by OCFS in April of 2007. Thereafter, OCFS requested that AFA provide OCFS with the complete case record regarding Michael and Tammy Farrell. The Farrells were approved as adoptive parents by AFA.

On September 12, 2005, Michael and Tammy Farrell signed a document provided by AFA entitled "Overview of Possible Birthmother Expenses to be Paid by the Adoptive Family" (see Attachment "FF"). On page one, the document states "All expenses must comply with Section 374(6) of the Social Services Law: i.e., 'in connection with or as a result of her pregnancy or the birth of the child'".

By letter dated December 27, 2005, AFA sent the adoptive parents an estimated budget relating to the adoption of an unborn child of "Natasha" from Louisiana (see Attachment "GG").

The case record provided by AFA to OCFS includes a fax dated March 21, 2006 from Dr. Judith Lee, Executive Director of AFA to Roxanne Coogler. Ms Coogler was the social worker in the office of the Louisiana attorney, Michael Theriot, who was the attorney for the adoptive parents in regard to a prospective Louisiana adoptive placement. The fax states in part:

> "No family was willing to take a $4,400 risk with no one having seen her, having had any proof of pregnancy, medical, etc. It was only after Mr. Theriot spoke with someone and had the bail lowered to $3,000 that it made it possible to match the case." (see Attachment "HH").

There are references in the progress notes of the case record provided by AFA to OCFS to payments for the birthmother's "Probation" for the dates: March 1, 2006, April 19, 2006, April 20, 2006 and April 21, 2006 (see Attachment "II").

In May of 2007, OCFS raised the issue of the allowability of the payment of $3,000 for the birthmother's bail with AFA. The response from AFA was a handwritten note from Michael Theriot, Esq. that the expenses were allowed under Louisiana law (see Attachment "JJ"). AFA did not address the implication of the bail payment on compliance with New York standards.

Also included in the case record provided by AFA to OCFS were pages two through five of the Fee Statement New York requires as part of each application for approval of an adoptive placement through the ICPC. The truth and accuracy of the Fee Statement was attested to by Judith Lee, Executive Director of AFA. This document was silent on the subject of the payment of bail for the birthmother (see Attachment "KK").

a) Payment of the birthmother's bail by the adoptive parent is not an allowable adoption related expense authorized by New York law (section 374(6) of the SSL). See discussion of this issue in regard to the Gennaro/Gardner complaint.

b) Payment of the birthmother's bail and its identification on the ICPC Fee Statement would have resulted in the denial of the ICPC application in this adoptive placement. See discussion of this issue in regard to the Gennaro/Gardner complaint.

c) AFA improperly relied on the opinion of the Louisiana attorney concerning the allowability of the bail payment in Louisiana and failed to address this issue in regard to its potential impact on AFA's clients in regard to New York law in violation of OCFS regulation 18 NYCRR 421.2(c).

AFA was previously warned by OCFS and by its predecessor agency, the New York State Department of Social Services (DSS), of the need to comply with New York law in relation to fees and of the potential adverse impact of non-compliance. In addition, AFA was previously warned by OCFS not to rely only on the representations of out of state agencies or attorneys (see Attachments "G", "H", "I" and "K").

d) AFA failed to comply with its own agreement with the adoptive parents to comply with section 374(6) of the SSL by condoning an unallowable payment of the birthmother's bail (or probation).

e) AFA failed to maintain accurate progress notes. The progress notes contain a January 5, 2006 entry that AFA received a possible referral from Michael Theriot regarding the birthmother "Natasha" (see Attachment "LL"). However, as noted above, with regard to Attachment "GG", AFA sent a letter dated December 27, 2005 to the adoptive parents referring to a projected budget for the adoptive placement of the unborn child of "Natasha".

f) The Fee Statement attested to by AFA did not expressly reflect the payment of the birthmother's bail. It is not clear from the Fee Statement how that expense was accounted for, if it was.

4. Other Regulatory Violations

On March 29, 2007 and April 12, 2007, OCFS staff conducted an on-site inspection of AFA at 362 West 46th Street in New York City. A random sample of eight case records was selected for review for compliance with OCFS regulations. Of the eight cases selected, three reflected

violations of OCFS regulation 18 NYCRR 421.11(i). The cases and the identified deficiencies were:

a) Smith: No progress note on current post placement visit seen in initial record review.
b) Potik/Nachlnoff: No progress note documenting placement.
c) Barbera: No progress note documenting first visit after placement.

In addition, in four records reviewed (Kemmerlin/Guadalupe, Weinberg/Seip, Ovarskei/North and Barbera) post placement contact between AFA and the adoptive parents following placement were not made with five working day after placement as required by 18 NYCRR 421.18(i).

5. Pattern of Continued Non-Compliance

The violations noted above do not reflect isolated misjudgments by AFA. Since the initial authorization of AFA in 1995, OCFS and its predecessor, DSS, have cited AFA on numerous occasions for violations of New York law and regulations, including some of the same standards noted in the cases above. On those occasions, OCFS and DSS requested specific corrective action by AFA. Such citations and requests for corrective action are reflected in the following OCFS/DSS letters: July 26, 1999 (Attachment "MM"), September 27, 1999 (Attachment "NN"), March 20, 2000, (Attachment "OO"), April 19, 2002 (Attachment "PP"), April 30, 2002 (Attachment "QQ"), May 20, 2002 (see Attachment "RR"), February 10, 2003 (Attachment "SS" and December 30, 2004 (Attachment "TT").

AFA provided assurances of compliance with New York statutes and OCFS regulations on several occasions, including in regard to previous applications for renewal of its authorization to operate an adoption program in New York. Such assurances are reflected in the following letters: August 12, 1999 (Attachment "UU"), April 13, 2000 (Attachment "VV"), May 13, 2002 (Attachment "WW"), May 28, 2002 (Attachment "XX"), December 23, 2002 (Attachment "YY"), and February 24, 2003 (Attachment "ZZ").

As reflected above, AFA continues to fail to comply with legal standards despite its numerous assurances of compliance.

This decision to deny AFA's application for approval is the final administrative decision of OCFS in accordance with OCFS regulation 18 NYCRR 483.3.

Upon receipt of this letter AFA is directed to immediately cease intake of new clients. Within 30 days from receipt of this letter, AFA must submit a close out plan to my attention. The close out plan must include:

- Current list of clients and the status of their adoptions
- AFA's plan to inform clients of the impending closure of AFA
- Plan to transfer active cases to another authorized adoption agency in the event an adoption cannot be completed before agency closure

- Agreement(s) with other authorized adoption agencies to handle post adoption requirements
- Agreement with another authorized adoption agency to store, maintain and retrieve client records
- Proposed disposition plan for agency assets

Sincerely,

Lee Lounsbury

Lee Lounsbury
Associate Commissioner
Division of Development and Prevention Services

cc: Jane Lynch
Karen Walker Bryce
Patricia Beresford
Brenda Rivera
John Stupp

Attachments

OCFS-748L (Rev 11/98)

ROUTE SLIP

OFFICE OF CHILDREN AND FAMILY SERVICES

ORGANIZATIONAL UNIT:

ORGANIZATIONAL LOCATION:

Room133 North, 52 Washington St., Rensselaer, NY 12144

TO:

Lee Prochera
Richard Lasky
Marc Minick
James Keeler
Cheryl Larrier
Lynne Robledo
John Linville

ACTION:

- ☐ Approval
- ☐ Signature
- ☐ Review
- ☐ Return to file
- ☐ As Requested
- ☐ Comment/ Recommendation
- ☐ Per Conversation
- ☐ Note & See Me
- ☐ Note & Return
- ☐ For your Files
- ☐ Necessary Action
- ☐ Return no later than C.O.B. _____
- ☐ Prepare Reply for my Signature
- ☐ Prepare Reply for Commissioner's Signature
- For your Information
- For your files__
- ☐ _____

REMARKS:

Letter to Laurie Walker re: Heart of America Adoption Center, Inc.

DATE1/9/04	FROM: John Stupp	PHONE NO.

New York State
Office of
Children & Family
Services

George E. Pataki
Governor

John A. Johnson
Commissioner

Capital View Office Park

52 Washington Street
Rensselaer, NY 12144-2796

January 9, 2004

Ms. Laurie Walker
Executive Director
Heart of American Adoption Center, Inc.
8676 West 96th Street Suite 250
Overland Park Kansas 66212

Re: Heart of America Adoption Center, Inc.

Dear Ms. Walker:

The purpose of this letter is to inform you of the determination of the New York State Office of Children and Family Services (OCFS) regarding the application of Heart of America Adoption Center, Inc. (HOA) to extend its authority to operate an adoption program in New York. Such application was made in accordance with Article 13 of the Not-for-Profit Corporation Law and section 460-a of the Social Services Law (SSL). Due to non-compliance with applicable statutes and regulations and OCFS standards relating to the approval of corporate renewals, OCFS is denying your application for the reasons set forth below.

A. Financial Status of HOA

As part of your application, OCFS required the submission of the most recent financial statement prepared by a certified public accountant. This information was evaluated to determine whether a corporation is fiscally viable (See 18 NYCRR 482.3).

HOA submitted an "Independent Auditors' Report" prepared by McAuley & Crandall, PA certified public accountants dated 4/22/03. This report was for the year ending 12/31/02. (See Attachment A). The "Independent Auditors' Report" states that for the year ending 12/31/02, liabilities of HOA exceeded assets by $75,140. In 2001, that figure was $63,780. Given the deficit of $75,140, OCFS concludes that HOA is not fiscally

viable for the purpose of approval of this agency's application for an extension of its authority to operate an adoption program in New York.

B. Compliance with State Statutes and Regulations

As part of the review of your application for approval to extend your authority to operate an adoption program in New York, OCFS requested that HOA provide OCFS with its complete case file for 23 cases. These files represented cases where children had already been placed for adoption. These files were reviewed by Home Office staff of OCFS in 9/03 and 10/03. In addition, OCFS reviewed 10 cases as part of its on site-review of HOA in 9/03. These files were selected at random and reviewed by staff of the OCFS New York City Regional Office (NYCRO). Finally, OCFS staff also inspected case files involving adoptive placements made by HOA through the Interstate Compact on the Placement of Children (ICPC) in 9/03 and 10/03. The results of these reviews are as follows:

I. Home Office Case Review (23 Cases)

The following deficiencies were identified in this review.

(a) Standard – Each home study must include a sworn statement from each applicant indicating, to the best of such applicant's knowledge, whether such applicant or any other person over the age of 18 residing in the applicant's home has ever been convicted of a crime in New York or in any other jurisdiction (18 NYCRR 421.15(c)(9).

Findings – Eighteen case files did not include a criminal history certification. was not included. (See Attachment B).

(b) Standard – The agency must develop for each person inquiring about adoption a record which contains:

1. a dated record of the inquiry, whether received by mail, telephone or in person;
2. a dated copy of the invitation to an orientation session conducted by the agency;
3. a dated copy of the written acknowledgement of the inquiry; and
4. a dated record of all further communications, whether by letter, telephone or in person (18 NYCRR 421.11(i)(1)-(4).

Findings - None of the files contained the information required by sections 421.11(i)(1)-(3). In 10 of 23 cases, there were no case notes addressing communications, as required by section 421.11(i)(4) (See

Attachment B). In 13 cases, there were case notes that addressed communications between a volunteer of HOA and birth parents(s). Some of the 13 cases files included contacts with potential adoptive parent(s), including, but not limited to the HOA client. (See Attachment B). However, the recording of such contacts in these 13 cases commenced with the contact by such volunteer with the birth mother, which usually was several months after the adoptive parent(s) applied to HOA thus often creating a large gap in the documentation of communications. Communications with prospective potential adoptive parents prior to the contact with the birth mother were not recorded and were rarely recorded after contact with the birth mother.

(c) Standard – The agency must develop a record for each adoptive applicant which must include a copy of all correspondence with the applicant (18 NYCRR 421.12(b)(5).

Findings – None of the case files included correspondence between the adoptive parent(s) and HOA reflecting the payment of fees and other expenses.

(d) Standard – The agency must prepare a written summary of the home study of the applicant and send such summary to the applicant for review and approval (See 18 NYCRR 421.15(e).

Findings - None of the case files included a summary of the home study or evidence that a summary was shared with an applicant.

(e) Standard – An adoptive placement agreement must be signed by the prospective adoptive parent(s) at the time of placement of the child for adoption.

Findings – An adoptive placement agreement in a case where a child was placed was not found in 5 case files (See Attachment B).

(f) Standard – When an applicant is approved as an adoptive parent, the agency must send an approval letter to the applicant notifying such person of approval.

Findings – In 2 case files, approval letters were not found. (See Attachment B).

(g) Standard – Each applicant for approval as an adoptive parent must be fingerprinted and criminal history results must be processed through OCFS by the agency. Before an authorized agency may approve an applicant, the authorized agency must receive from OCFS the results of the criminal history record review in the form

of a criminal history record summary (section 378-a(2) of the SSL; 18 NYCRR 421.15 (c)(8) & 421.27).

Findings – In 6 cases, HOA approved persons as adoptive parents and placed children in their homes without completing the criminal history record review process as required by State statute and regulation (See Attachment B). HOA apparently relied on a previous clearance performed pursuant to section 115-d of the Domestic Relations Law (DRL) for private adoptions. Failure to comply resulted in the inability of HOA to be informed of subsequent arrests of such applicants. Had HOA complied with State requirements for agency adoptions, HOA would have been informed by OCFS of any subsequent arrests of the applicants or other person over the age of 18 residing in the home of the applicant (See Attachment B).

(h) Standard – Each applicant for approval as an adoptive parent must be reviewed by the Statewide Central Register of Child Abuse and Maltreatment administered by OCFS to determine whether such person or any other person over the age of 18 residing in the home of the applicant is the subject of an indicated report of child abuse and/or maltreatment (Section 424-a of the SSL; 18 NYCRR 421.15(c)(7).

Findings – In 6 cases, HOA approved persons as adoptive parents and placed children in their homes without completing the child abuse/maltreatment process required by State statute and regulation (See Attachment B). HOA apparently relied on a previous clearance done pursuant to section 115-d of the DRL for private adoptions and/or clearances done through another authorized agency (See Attachment B).

(i) Standards – Criminal history information, including the criminal history summary issued by OCFS to the authorized agency, is confidential and may only be disclosed to persons and entities, as set forth in State statute and regulation (Section 378-a(2)(i) of the SSL; 18 NYCRR 421.27(g).

Findings – In 2 cases, case files included information on the release of confidential criminal history summaries to unauthorized persons and agencies (non-authorized agency and approved applicant) (See Attachment B).

(j) Standard – Results of SCR reviews conducted pursuant to section 424-a of the SSL are confidential (Section 422(4)(A) of the SSL).

Findings – In 1 case, HOA disclosed section 424-a clearance results issued by OCFS to out of state agencies, without client consent or other legal authorization (See Attachment B).

II. Regional Office Review (10 Cases)

Findings of non-compliance with the case recording requirements set forth in 18 NYCRR 421.11(i), sworn criminal history statement set forth in 18 NYCRR 421.15(c)(9) and home study summary standards required by 18 NYCRR 421.15(e) were found in all 10 case files reviewed. (See Attachment C)

Additional violations were identified in the following cases:

(a) Standard – The agency must take steps to identify the birth father, determine the extent of the relationship between the birth father and the birth mother and the birth father and the child, and make efforts to involve the birth father in planning for the child.

Findings – In the Alverez/McCauley case, the record demonstrated no efforts by HOA to ascertain the birth father's whereabouts or the intentions of the birth father to parent the child. (Note: The same finding may be made, at least, for the 10 cases in the Home Office review where no case notes were in the case file.)

(b) Standard – Each applicant for approval as an adoptive parent must be fingerprinted and criminal history results must be processed through OCFS by the agency (Section 378-a(2) of the SSL; 18 NYCRR 421.15(c)(8) & 421.27).

In 4 cases (Feurbach, Brown, Acevedo and Gaor), the criminal history record review summary was not found in the case file.

III Home Office Reviews of ICPC Cases

Section 374-a (11)(a) of the SSL requires that the sending agency in an interstate adoption, subject to the ICPC, must submit to OCFS a full statement setting forth all fees, including categories of such fees, paid and to be paid by the adoptive parent(s) to any agency or person in exchange for the adoptive placement. Section 374-a (11)(b) of the SSL provides that OCFS may not approve a proposed placement that violates section 374(6) of the SSL. Section 374(6) of the SSL provides that only an authorized agency, as defined in section 371(10) of the SSL, may charge or receive a fee in relation to the placing our of a child for the purpose of adoption. The statute references exceptions relating to actual and reasonable medical and legal expenses. The statue also expressly applies

to placements from another state into New York. Section 374(2) of the SSL provides that, aside from a parent, relative or guardian, only an authorized agency may place out a child for adoption in New York. Note: An OCFS approved Article 13 foreign corporation is deemed an authorized agency for the purposes of section 374 of the SSL.

In conformance with the requirements of section 374-a (11) of the SSL, OCFS requires that an "Adoption Placement Fee Disclosure – Statement" (Fee Statement) be submitted with each proposed adoptive placement (See Attachment D). The Fee Statement must describe "how the birth parent(s) and the adoptive parent(s) became aware of each other (including dates, (City/State) locations, and involvement of any third persons and/or agency". Truth and accuracy of the Fee Statement is attested to in the "Affirmation of Financial Disclosure" (See page 5 of Attachment D).

Over the past year, OCFS monitored several ICPC cases in which HOA submitted Fee Statements. Since 2000, OCFS has informed HOA on several occasions of its concerns over the role of non-New York approved authorized agencies such as American Adoptions (both Kansas and Florida) and Nine Months Adoption in relation to adoptive placements involving HOA and New York residents (See Attachments E, F, G and H).

Fee Statements submitted to OCFS and sworn to by the Executive Director of HOA, Laurie Walker, have contained misleading and inaccurate information. OCFS compared the Fee Statements with information subsequently collected by OCFS upon further inquiry by OCFS. The analysis is as follows:

1. Hinds/Donnelly

The HOA Fee Statement sworn to by Laurie Walker on 2/13/03 stated:

> "The birth parent contacted the Agency through the internet. The Agency sent the birth parents profiles from which to choose a family to parent their child. The birth parents chose the Hinds and Donnelly family to parent their child. The family was presented with the situation and upon agreeing were matched with the birth parents by the Agency." (See Attachment I).

In a letter dated 8/19/03 (see Attachment J), counsel for HOA, at the request of OCFS, stated that the circumstances of the placement were:

> "The birth mother contacted American Adoptions via the Internet. American Adoptions did not have any families to send to the birth mother that were accepting of the situation (full African American

child). American Adoptions resourced with Heart of America to see if they had any families to send her; they, too, did not. Heart of America contacted Michael Goldstein to send families he had that would accept the situation. Michael Goldstein sent several families for the birth mother to review. The birth mother chose the Hinds/Donnelly family to parent her unborn child."

2. Sauro

The HOA Fee Statement sworn to by Laurie Walker on 12/10/00 stated:

> "The birth mother contacted the agency through the yellow pages of the telephone book. Several family profiles were sent to the birth mother to review. The birth mother chose the Sauro family to parent her unborn child. The Sauro's were presented with the situation and upon agreeing were matched with the birth mother." [See Attachment I(2)].

By letter dated 8/19/03, HOA stated:

> "The birth mother contacted American Adoptions via the yellow pages of the telephone book. American Adoptions sent the birth mother eight adoptive family profiles to review. The birth mother did not visually care for any of the American Adoption profiles. American Adoptions resourced with Heart of America to send profiles. Heart of America sent two profiles. From the two profiles sent the birth mother chose the Sauro family to parent her unborn child."

3. Wilbur

The HOA Fee Statement worn to by Laurie Walker on 3/12/03 stated:

> "The birth mother located the agency through the yellow pages of the telephone book. The birth mother was sent several profiles from which to chose a family for her child. The birth mother chose the adoptive family Wilbur to parent her child. The family was presented with the situation and upon agreeing was matched with the birth mother." [See Attachment I(3)].

By letter dated 8/19/03, HOA stated:

> "The birth mother contacted American Adoptions via the yellow pages of the telephone book. American Adoptions sent the birth mother eleven profiles to review. The birth mother did not visually care for any of the American Adoptions families. American Adoptions resourced with Heat of America to send profiles. Heart

> of American sent the birth mother one profile as they only have one New York family open to the race of the child. The birth mother reviewed the profile and chose the Wilbur family to parent her child."

4. Weisberg

The HOA Fee Statement sworn to by Laurie Walker on 4/22/02 stated:

> "The mother initially contacted the agency on November 16, 2001. She reported that she was pregnant and desirous of placing the child to be born to her for adoption with a loving and financially secure couple. The birth mother selected the adoptive parents after being furnished profiles of several couples by the agency." [See Attachment I(4)].

By letter dated 8/19/03, HOA stated:

> "The birth mother contacted American Adoptions via the yellow pages of the telephone book. American Adoptions sent the birth mother eight profiles to review. The birth mother did not visually care for any of the American Adoptions families. American Adoptions resouced with Heart of America to send profiles. Heart of America sent her one profile as only one family met the requirements of the high living expenses. The birth mother reviewed the profile and chose the Weisberg family to parent her child."

5. Burns

The HOA Fee Statement sworn to by Laurie Walker on 12/9/02 stated:

> "The birth mother contacted the agency through the Internet. She reported that she was pregnant and desirous of placing the child to be born for adoption. The agency sent the birth mother several adoptive family profiles of which she chose the adoptive family Burns. The Burns were presented with the situation and were matched with the birth mother." [See Attachment I(5)].

By letter dated 8/19/03 HOA stated:

> "The birth mother contacted American Adoptions via the Internet. American Adoptions sent the birth mother nine profiles to review. The birth mother did not visually care for any of the American Adoptions families. American Adoptions resourced with Heart of America to send birth mother profiles. Heart of America had one

family that met requirements of the situation, i.e. the baby's race. The birth mother chose the Burns family to parent her child."

6. McArthur

The HOA Fee Statement sworn to by Laurie Walker on 1/13/03 stated:

> "The birth mother contacted the agency through the yellow page of the telephone book. The agency sent her several family profiles to choose from. The birth mother chose the adoptive family, Paula and Stuart McArthur, to parent her child. The adoptive family was presented with the situation and upon agreeing was matched with the birth mother." [See Attachment I(6)].

OCFS thereafter requested clarification concerning the circumstances of the placement. By e-mail dated 2/12/03 Sean Lance [sean@americanadoptions.com] advised OCFS:

> "The mother originally contacted American Adoptions(AA) via yellow pages. The birth mother did not like the adoptive families that she was presented by American Adoptions (AA). AA also, did not have any other families that would be able to [meet] her needs or desires. Therefore, the birth mother was shown families from HOA that met her needs and desires." [See Attachment K].

7. Murphy

The HOA Fee Statement sworn to by Laurie Walker on 11/4/02 provided:

> "The birth mother found Heart of America Adoption Center, Inc. in the yellow pages. Heart of America Adoption Center, Inc. referred the birth mother to International Services Corporation, Inc. d/b/a, upon the birth mother not liking any of the families, Heart of America Adoption Center, Inc. sent to her to review. Thus International Services Corporation, Inc. d/b/a sent the birth mother family profiles to review. The birth mother chose the Murphy family to parent her child. The adoptive family was presented with the situation and upon agreeing were matched with the birth mother." [See Attachment I(7)].

Upon a request from OCFS for clarification of the facts and circumstances of the placement, per letter dated 12/2/02, HOA stated:

> "The birth mother originally located American Adoptions through the yellow pages, American Adoptions then referred the birth mother to Heart of America." (See Attachment L).

8. Tyrell

The HOA Fee Statement sworn to by Laurie Walker on 6/17/03 stated:

> "The birth mother contacted the agency through the yellow pages of the telephone book. The agency sent several family profiles to chose from. The birth mother chose the adoptive family, Gregory and Marybeth Tyrell, to parent her child. The adoptive family was presented with the situation and upon agreeing was matched with the birth mother." [See Attachment I(8)].

Following a request by OCFS for clarification of the facts and circumstances of the placement, Laurie Walker, by letter dated 6/24/03, stated that the birth mother "contacted American Adoptions of Florida after viewing their advertisement in the yellow pages". Ms Walker also stated that American Adoptions of Florida, Inc. thereafter contacted HOA to see whether HOA had any available families. HOA sent profiles to the birth mother for her review and selection. The birth mother selected the Tyrells from the profiles sent by HOA. (See Attachment M).

9. Ortiz

The HOA Fee Statement sworn to by Laurie Walker on 7/2/02 stated:

> "The birth mother contacted Heart of America Adoption Center, Inc. means of contact unknown. Heart of America Adoption Center, Inc. in turn contacted Adoption Choice. Adoption Choice worked with Heart of America Adoption Center, Inc. to locate a family to parent the birth mother's child. The birth mother was presented with several adoptive profiles from which she chose the Ortiz family. The Ortiz family was presented with the situation and upon agreeing to the situation was matched with the birth mother." [See Attachment I(9)].

However, the "Relinquishment Counseling Summary Social and Medial History" prepared by Adoption Choice Center and dated 6/21/02 stated:

> "Heaven's mother contacted American Adoptions through the telephone directory, and they sent Heaven several profiles of prospective adoptive parents. Heaven selected John and Jennifer Ortiz of New York." (See Attachment N).

10. Gorelik

The HOA Fee Statement sworn to by Laurie Walker on 7/18/02 stated:

> "The birth mother was referred to American Adoptions of FL, Inc. through a close friend. American Adoptions of FL, Inc. did not have any families that the birth mother liked and was thus referred to Heart of America Adoption Center, Inc. Heart of America Adoption Center, Inc. sent the birth mother several adoptive profiles from which she chose the Gorelik family. The Goreliks were presented with the situation and upon accepting were matched with the birth mother." [See Attachment I(10)].

Case notes dated 7/7/02 submitted to OCFS by HOA refer to attempts to identify adoptive parents through a private attorney, Jeanine Tate, Esq. Several prospective adoptive parents were identified in the case notes as possible placement options. The birth parent apparently was satisfied with several families, with financial concerns being the apparent issue, not the likes and dislikes of the birth mother (See Attachment O).

As noted above, OCFS relies on the information contained in the Fee Statement to ascertain compliance with State standards relating to adoption related fees. OCFS also relies on the Fee Statement to identify potential legal issues relating to placement of children in violation of State law. The Fee Statement must be complete and accurate.

In the Fee Statements referenced above, the clear inference is that "the agency' or "the Agency" is HOA, since the Fee Statement is submitted and sworn to by the Executive Director of HOA. Only one agency is referenced. The clear inference is that the birth mother contacted only HOA and only HOA was involved in the placement process.

In fact, all of the contacts were initially made with an agency other than HOA. They were made with American Adoptions, which is not a New York approved adoption agency. In Murphy, the Fee Statement stated that HOA was initially contacted when it was later determined that American Adoptions was originally contacted. In Gorelik, a private attorney was involved in locating potential families for placement and such activities were not mentioned in the Fee Statement.

In Hinds/Donnelly soon after the receipt of the Fee Statement, OCFS requested clarification from HOA of the role of a Nevada adoption agency that was charging $9,650 for legal services. The reply for HOA was given by Sean Lance in the e-mails dated 2/19/03 (See Attachment P). In the e-mail entitled "Heart of America", Mr. Lance expressed concerns that OCFS was "questioning our fees for one of our cases". In the other e-mail, Mr. Lance stated that the birth mother "contacted us in November 2002 for adoption services." We provided counseling and support services". The involvement of a private attorney in the process of locating

adoptive parents was not referenced in the Fee Statement. OCFS assumed, apparently incorrectly from Mr. Lance's statements, that the birth parent first contacted HOA. OCFS was latter advised that the birth mother initially contacted American Adoptions (See Attachment J). This fact Mr. Lance should have been aware as he was functioning in some capacity for American Adoptions given his then e-mail address [sean@americanadoptions.com] (See Attachment P).

By letter dated 4/30/03 (See Attachment Q), OCFS cited HOA for the accuracy and completeness of its Fee Statements. Despite this warning, HOA continued to submit misleading and inaccurate Fee Statements as reflected in the Tyrell Fee Statement dated 6/17/03 which, again, refers to "the agency".

Recently, OCFS received an ICPC application, including sworn Fee Statement executed by Laurie Walker in the Shaw placement. The Fee Statement sworn to by Ms. Walker on 11/24/03 stated:

> "The birth mother was referred to American Adoptions, Inc by another birth mother. American Adoptions, Inc. sent her information and thirty adoptive family profiles. The birth mother did not care for any of these families thus American Adoptions, Inc. resourced with Heart of America to send the birth mother families. Heart of America sent the birth mother three family profiles to review. She chose Steven and Anita from the profiles sent. The family was presented with the situation and upon agreeing were matched with the birth mother by Heart of America." (See Attachment R).

In addition, there is a section in the Fee Statement on placement fees that references $11,000 paid to HOA as a matching fee. There is a section on legal services that referenced "Little Flowers David Cole, Attorney @ Law" for $4,957 (See pages 2 and 3 of Attachment R).

OCFS inquired of Little Flower Adoptions, a non-New York approved adoption agency, what legal services were provided to the adoptive parents and how much of the $4,957 was allocated for such services. The reply from Little Flower Adoptions dated 12/4/03 stated:

> "In response to your fax today, I am writing to clear up any questions regarding expenses. My agency fee is $4250. This includes birth parent counseling and support, ICPC preparation, adoptive parent preparation and support services, document preparation, and complete facilitation of the adoptive placement within the laws of the State of Texas and within Texas licensing standards. The agency took a legal relationship with the baby and

> is responsible for the placement until finalization (after 6 months of placement with the adoptive family). The agency fee covers total functioning as an adoption agency, even though this adoption situation came to me already "matched" through American Adoptions." (emphasis added) (See Attachment S).

Little Flower Adoptions was involved in the placing out of this child. According to Little Flower Adoptions, American Adoptions "matched" the adoption situation. The implication of this arrangement is that OCFS had to disapprove this ICPC application for a violation of 374(6) of the SSL. The Fee Statement submitted by HOA was inaccurate. Either HOA knew of this arrangement and intended to mislead OCFS or was negligent in failing to have knowledge of the facts to which it was attesting.

C. Viability and Credibility of HOA

HOA relies on the work performed by "volunteers" who are also employees of other adoption agencies, including persons who are the chief operating officer of other agencies. As presented in its renewal application, HOA had 4 full time employees and one part time employee (See Attachment T). (OCFS was thereafter advised that HOA recently discharged one of its full time staff). In its renewal application, HOA advised OCFS that it uses the services of 14 "volunteers" who, while on the payroll of American Adoptions or Nine Months Adoptions, give 5-20 hours per week to HOA for free (See Attachment T). These services are provided without any contractual relationship between HOA and the other two agencies.

As stated by HOA, there is no legal commitment on the part of American Adoptions or Nine Months Adoption to continue to make the "volunteers" available to HOA. Any day, the board of directors of these other adoption agencies could direct their employees to cease donating their time to HOA. Should that take place, HOA could not function. There is no legally binding guarantee that this scenario would not take place. This creates an unreasonable risk of a disruption of services to New York clients.

The representations by HOA regarding the functional independence of the agency are not consistent with the facts. HOA is intimately related to American Adoptions. As noted above, 13 American Adoptions employees, including its Executive Director, provide services for HOA. As stated in the letter dated 11/26/03 from HOA counsel, several employees and one board member of HOA are former employees of American Adoptions (See Attachment U). As seen in the care reviews and the ICPC reviews, all contacts with birth parents either emanate from and/or are done by American Adoptions staff. American Adoptions and

HOA share office space and apparently the same person answers the phone for both agencies. Sean Lance, who was identified in HOA's renewal application as the Executive Director of Nine Months Adoption, also services clients of American Adoption. American Adoptions is not a New York approved adoption agency. However, it solicits New York families for adoption. Its website (www.americanadoptions. com) holds itself out to birth parents that some of its adoptive parents are from New York (See Attachment V). New York residents who inquire about being clients of American Adoptions are not told that American Adoptions is not an approved New York adoption agency. When asked about the licensure status of American Adoptions in relation to New York, Sean Lance who held himself our as an employee of American Adoptions (and who is a "volunteer" of HOA and is the resident agent of Nine Months International, Inc (See Attachment W), stated that American Adoptions' "affiliate agency, Heart of America Adoption Center, Inc., is actually the name of the agency that is licensed in the State of New York. All programs and services offered are identical to American Adoptions" (See Attachment X).

The HOA website (www.hoaadoptions.com) contains inconsistencies and misleading information. In the section entitled "Pregnant?" that is targeted to birth mothers, HOA states that "Heart of America works nationwide, meaning we help pregnant mothers and adoptive families all across the United States" (See Attachment Y). However, in the section entitled "Looking to Adopt?' that is targeted to potential adoptive parents, HOA states that "Heart of America only works with adoptive families from the State of New York" (See Attachment Z). Note: when HOA originally applied and received approval as an adoption agency in New York, HOA held itself out as being a nationwide adoption agency and that it serviced adoptive parents from other states in addition to New York. When HOA sought renewal of its authority in 2000, the then Executive Director of HOA informed OCFS in a letter dated 5/8/00 that "(o)ur adoptive parents come from all over the country" (See Attachment AA. HOA has never informed OCFS in writing of the limitation of its program to only New York adoptive parents.

The HOA website states that it performs criminal history background checks similar to what has to be done "to join the FBI or important federal agency" (See Attachment Y). That is not correct. The only criminal background check HOA performs is a check through OCFS and the New York State Division of Criminal Justice Services in accordance with section 378-a(2) of the SSL, which is not a nation wide check and does not include FBI checks.

Over the past several years, OCFS has expressed concerns regarding the independence of HOA. Concerns have been raised by New York clients

regarding which agency was actually their agency. This confusion, in part, has arisen because HOA shares offices with other agencies and employees of other agencies service HOA cases. These concerns and efforts to obtain clarification of the actual relationship between HOA and other agencies, in particular American Adoptions, and reflected in a series of correspondence noted below.

By letter dated 3/27/00, OCFS inquired of HOA what relationship HOA had with American Adoptions (See Attachment E).

HOA, by letter dated 5/8/00 responded:

> "Heart of America has remained a small, service-intensive agency, with no more that two or three part-time employees. At the same time, American Adoptions has grown into a large, very successful "networking" style agency whose placements number in the hundreds, yearly.
>
> Because Heart of America has recently had difficulty staffing its Kansas office, we have utilized services of American Adoptions' Kansas office. They answer our telephone lines and store our files, and one of their social workers, Brandi Studer contracts directly with us to work with our birthmothers in the greater Kansas City Area. Because American Adoptions has no office in St. Louis, where the Missouri office of Heart of America is located, the undersigned contracts with American to work with its birth mothers in the Greater St. Louis Area.
>
> For the past couple of months, the agencies have been exploring the possibility of eventually merging services. Such a merger is viewed by both agencies to be in the best interest of our clients because of the meshing of coverage areas and, eventually for Heart of America, the increased activity which would by generated by further pooling the resources of the two agencies." (See Attachment AA)

The Executive Director of American Adoptions, Scott Mars, by letter dated 4/25/00 also responded to OCFS by saying:

> "As suggested and reiterated in previous responses, American Adoptions has no legal relationship of any kind with Heart of America.
>
> Heart of America and American Adoptions have discussed for months the advantages of merging our adoption programs, but

> before a merger is implemented we wanted to discuss the effects a merger would have on licensing in all respective states.
>
> American Adoptions provides some services to Heart of America, which Joseph Vader pointed to our in a letter to New York. Heart of America also provides some services for American Adoptions. Because the level of services are inconsequential, American Adoptions is not financially compensated for the services provided to Heart of America.
>
> There is also no legal contract between Nine Months or American Adoptions. They are both separately licensed agencies separate corporations and are licensed in different states. American Adoptions rents an entire office building in Kansas City and we have more space that we can use. Therefore, we allow Nine Months to share some of our office space in Kansas City, as we are now doing with Heart of America." (emphasis added) (See Attachment BB).

By letter dated 6/23/00, OCFS requested HOA to provide the following information:

> "A copy of any contracts for the purchase of adoption related services Heart of America may have. Specifically, OCFS is interested in any contracts you may have with American Adoptions, Inc.
>
> Please clarify what role American Adoptions staff have in decisions relating to placements made by Heart of America. What supervision is provided by Heart of America. What supervision is provided by Heart of America of contract staff?
>
> Please advise what, if any, relationship Heart of America has with Nine Months Adoptions." (See Attachment F).

By letter dated 6/29/00, HOA responded as follows:

> "There are no contracts executed between Heart of America and American Adoptions.
>
> Normally, American Adoptions staff have no role in decisions relating to placements made by Heart of America. However, there was an instance recently, in which several American Adoptions employees witnessed a very disturbing encounter with a prospective adoptive mother. Our contract social worker was also present, as well as an independently licensed contract foster

> mother. Based on the observations of all those present during the encounter, a decision was made to disrupt the placement. The person who made the decision was our contract social worker.
>
> Heart of America has no relationship whatsoever with Nine Months Adoptions." (emphasis added) (See Attachment CC).

By letter dated 9/22/00, OCFS again requested a response from HOA regarding HOA's relationship with American Adoptions and Nine Months Adoption.

> "Please describe the relationship of the agency with American Adoptions and Nine Months. Describe the full extent of any relationship, including but not limited to provisions for sharing of staff, office space, or information. Please address whether your agency pays any monies to either or both agencies. This request includes formal and informal relationships.
>
> Is there any plan for Heart of America to merge with American Adoption? What role, if any, does Scott Mars have with your agency?" (See Attachment G).

By letter dated 11/5/00, HOA informed OCFS:

> "Heart of America Adoption Center and American Adoptions exist as separate adoption agencies. As discussed in previous correspondence (see enclosed letter) to New York licensing, we utilize American Adoptions services to handle administrative duties for Heart of America. Heart of America has paid no monies to either American Adoptions. If American Adoptions renders future services, all fees will be disclosed to New York ICPC. There is no reason for Heart of America to ever receive services from Nine Months Adoption.
>
> There are no plans for Heart of America to merge with American Adoptions at this time. In previous correspondence with New York licensing, I had mentioned that there had been discussion as to a possible merger between American Adoptions and Heart of America Adoption with Scott Mars, the Executive Director of American Adoptions, but we choose to maintain our own agency and no further discussion have been initiated at this time. To address the role of Scott Mars in regards to his involvement with Heart of America. Mr. Mars has no role with Heart of America Adoption Agency." (emphasis added) (See Attachment DD).

On 3/9/01, a conference call was conducted involving OCFS and HOA over HOA's application for renewal of its corporate authority to operate an adoption program in New York. Issues regarding staffing were discussed. At no time did HOA mention that "volunteers" were being used nor did HOA mention the change in role of either Scott Mars or Sean Lance.

By letter dated 3/20/01, HOA advised OCFS:

> "I met briefly with Scott Mars about American Adoptions intentions of starting the licensing process in New York. At this point and time, American Adoptions is considering beginning the licensing process. I gave them your name as a contact should they move forward with their intentions. There have been no further discussions between the Executive Directors from both agencies pertaining to Heart of America merging with American Adoptions. Any discussion that would take place in the future will involve input of New York licensing.
>
> Heart of America Adoption Center and American Adoptions exist as separate agencies. Enclosed is a letter from GLR Properties Real Estate, which outlines the amount we pay for leasing our office space. I have also enclosed a copy of the Professional Courtesy Agreement between Heart of America and American Adoptions. I would like to reiterate that Heart of America Adoptions has paid no monies to American Adoptions. American Adoptions allows us to utilize their phone system, receptionist and office equipment as a professional courtesy. In return, Heart of America Adoptions provides adoption services to birthmothers as well as home study services to adoptive families in the St. Louis area as a professional courtesy. The agreement is considered an equal trade of services. Should American Adoptions render future services that involve payment, all fees will be disclosed to New York licensing and New York ICPC." (See Attachment EE)

Note: The professional agreement is silent on the use of "volunteers".

By letter dated 4/10/01, OCFS confirmed the understanding relating to the use of American Adoptions staff and the independent functioning of HOA:

> "(b) Heart of America agrees to no longer contract with part time or full time employees of American Adoptions for the purpose of adoption services.
>
> The person or persons receiving telephone calls at the Overland Park office will process calls for Heart of America separate and

> independent from American Adoptions." (emphasis added) (See Attachment H).

By letter dated 5/24/01, HOA confirmed its staffing would involve:

> "I am responding to your letter dated April 10, 2001, regarding additional conditions that need to be clarified before extending Heart of America Adoption, Inc. authority to continue to operate as an adoption agency in New York.
>
> * * *
>
> (b) Heart of America has hired one full time social worker and is currently in the interview process to hire an additional social worker to provide counseling services to birth mothers. In order to provide the best services to our birth mothers, we will maintain our policy of using contract social workers if the services are required, however, we would ultimately like to utilize Heart of America social workers in all our adoption cases." (See Attachment FF).

Based on these representations, by letter dated 6/27/01, OCFS granted HOA a two year extension. It was OCFS' understanding that HOA had taken the steps to eliminate reliance on staff from another licensed adoption agencies.

When OCFS approved HOA's 2001 extension of its authority to operate an adoption program in New York in 6/01, OCFS did so based on the following assurances and representations by HOA:

1) The relationship between HOA and American Adoptions was very limited. The services provided by American Adoptions were limited to the use of equipment, phone system and receptionist, as forth in the Professional Courtesy Agreement. The relationship, as described by Scott Mars, was "inconsequential".

2) HOA would use HOA staff to carry out its functions and would no longer use staff from other adoption agencies for adoption services. The work force of HOA would be independent of staff from other adoption agencies. American Adoptions employees were not to be involved in decision making in adoption placements involving HOA clients.

3) No monies were paid by HOA to American Adoptions. If they would be paid in the future, HOA would so inform OCFS through the ICPC.

4) HOA received no services from Nine Months Adoptions.

5) Scott Mars, the Executive Director of American Adoptions had no role with HOA.

The reality, as subsequently discovered by OCFS, was that the reliance by HOA on staff of other adoptions agencies, principally American Adoptions, grew significantly in 2001 while OCFS was negotiating the extension of HOA's corporate authority. The relationship between HOA and American Adoptions was far more extensive at the time HOA was assuring OCFS that it was limited to activities referenced in HOA's correspondence noted above. Apparently, HOA started listing families with American Adoptions beginning in "early 2001". Scott Mars, instead of having "no role" with HOA started "volunteering" for HOA in 12/00, one month after OCFS was advised by HOA that he had no role. While OCFS was assured that Nine Months Adoptions provided no services, Nine Months Adoptions' registered agent and Executive Director, Sean Lance had been a "volunteer" of HOA beginning in 12/00 to the present. Time and time again, OCFS was advised that no payments passed from HOA and American Adoptions and visa versa. However, HOA's Independent Auditor's Report and the letter dated 11/26/03 (See Attachments A and U) show that $53,531 is due to a related party which is American Adoptions. A reasonable reading of the case notes contained in some case files clearly show that American Adoptions employees are directly involved in adoption activities and decision making. A further example of the blurred or absent functional distinction between HOA and American Adoptions is reflected in their respective websites. Examples of the use of identical or similar information made available to the public, including New York clients, are attached (See Attachment GG).

D. Final Decision on HOA's Application

This letter constitutes the final decision of OCFS in regard to your application for renewal. OCFS regulation, 18 NYCRR 483.3, affords OCFS discretion regarding what additional administrative review, if any, is warranted in relation to a denial. OCFS has afforded HOA extensive opportunities to demonstrate compliance with New York statutes and regulations. The basis for the decision by OCFS is set forth in detail in this letter. Accordingly, this is our final decision

OCFS demands a list of the names and addresses of existing New York clients of your agency so that OCFS may disseminate a letter to notify them of this decision. You are directed to cease intake of new clients. Per the New York State Administrative Procedure Act, you may continue to operate until the time to file an appeal of this decision (four months) has expired. This should enable you to complete any pending placements for

current New York clients. Please prepare a close out plan and submit such to OCFS within one months of the date of this letter.

Very truly yours,

John E. Stupp
Assistant Deputy Counsel
Bureau of House Counsel

Enclosures

cc: Lee Prochera, Esq.
Richard Lasky
Marc Minick
James Keeler
Cheryl Larrier
Lynne Robledo
John Linville, Esq.

McCarthy Exhibit B

Andrew M. Cuomo
Governor

NEW YORK STATE
OFFICE OF CHILDREN & FAMILY SERVICES
52 WASHINGTON STREET
RENSSELAER, NY 12144

Gladys Carrión, Esq.
Commissioner

Administrative Directive

Transmittal:	11-OCFS-ADM-04
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	April 25, 2011
Subject:	**Religious Designation of a Foster Child and a Child Being Placed for Adoption**
Suggested Distribution:	Directors of Social Services Foster Care Supervisors Child Protective Services Supervisors Adoption Supervisors Home-finding Supervisors Staff Development Coordinators
Contact Person(s):	Questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office- Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.state.ny.us Rochester Regional Office- Karen Buck (585) 238-8201 Karen.Buck@ocfs.state.ny.us Syracuse Regional Office- Jack Klump (315) 423-1200 Jack.Klump@ocfs.state.ny.us Albany Regional Office- Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.state.ny.us Spring Valley Regional Office- Patricia Sheehy (845) 708-2499 Patricia.Sheehy@ocfs.state.ny.us New York City Regional Office- Patricia Beresford (212) 383-1788 Patricia.Beresford@ocfs.state.ny.us Native American Services- Kim Thomas (716) 847-3123 Kim.Thomas@ocfs.state.ny.us or to New York State Adoption Service-Brenda Rivera (518) 474-9406 Brenda.Rivera@ocfs.state.ny.us
Attachments:	Yes (links provided)
Attachment Available Online:	http://www.ocfs.state.ny.us/main/forms/ or http://ocfs.state.nyenet/admin/Forms

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 l etter, 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

Issued By:
Name: Nancy W. Martinez
Title: Director
Division/Office: Strategic Planning and Policy Development

LDSS-3416 (Rev 3/2011)

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICE

RELIGIOUS DESIGNATION OF A CHILD

NOTE: You may use this form to state whether or not you want your child to be cared for by persons of a particular religion. Your wishes will be followed if it is practicable and in the best interests of the child.

Religious wishes of a 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 as a subordinate (less important) consideration. If you do not use the form, we will assume that you want the child to be reared in your religion. This form is voluntary. No one can tell you what to choose. Your right to the religious designation of your child has been explained to you.

CHILD'S FULL NAME:	DATE OF BIRTH:

I am:
- ☐ the birth father of the above child who was born in wedlock.
- ☐ the birth mother of the above child who was born in wedlock.
- ☐ the only surviving parent of the above child who was born in wedlock.
  - I am the ☐ father ☐ mother of such child.
- ☐ the birth mother of the above child who was born out of wedlock.
- ☐ the birth father of the above child who was born out of wedlock.

MY NAME IS (Print):

MY RELIGION IS (Print):

It is my wish, where practicable and if consistent with the best interests of the child, that the above named child be placed:

- ☐ 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.

PARENT SIGNATURE:	DATE:

AGENCY OFFICIAL SIGNATURE	DATE:

PRINTED NAME	TITLE:

NOTE: This form must be attached to the child's Uniform Case Record.