Foster Sibling Rights in New York
Educational Research Document
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Sibling Rights in New York

Summary Paragraph: New York has a strong statutory framework supporting the rights of siblings who are both in foster care and out of foster care to have regular contact. Statutory presumptions in favor of joint placement of siblings in foster care, and for regular contact when joint placement is not possible, guide judicial review of sibling placement at all stages of a child's foster care placement. The statutes include mechanisms for enforcing those rights when one or both of the siblings are in foster care. Siblings who are not in foster care may also commence a judicial proceeding to enforce their rights to have contact, even after one or both of the siblings has been adopted.

1. Foster Youth Bill of Rights

New York provides a comprehensive Foster Youth Bill of Rights through the Office of Children and Family Services (OCFS). This Bill of Rights explicitly recognizes the importance of sibling relationships for children in foster care. It ensures that foster youth are informed of their rights, including the right to maintain contact and relationships with their siblings throughout their time in care. The Bill of Rights is designed to be accessible to youth and to guide agencies and caregivers in upholding these rights.

2. Statutory Definition of Siblings

New York law adopts an inclusive definition of "siblings" for the purposes of foster care and adoption. "Siblings" includes half-siblings and any individual who would be considered a sibling or half-sibling but for the termination of parental rights or the death of a parent. This definition ensures that sibling rights persist even after adoption or other disruptions in the parent-child relationship. (See Social Services Law (SOS) § 358-a(11)(d); Family Court Act (FCA) §§ 1027-a; 1081(2)(b); 1055(c);).

3. Preference for Sibling Placement

New York statutes establish a strong and clear preference for the joint placement of siblings in foster care. Sections 1027-a, 1055, and 1095 of the Family Court Act, as well as sections 358-a(11) and 384-a(1-a)(b) of the Social Services Law, require that efforts be made to place siblings or half-siblings together unless such placement is contrary to the best interests of the children. Those statutes further provide that placement or regular visitation and communication with siblings or half-siblings is presumptively in the child's best interests unless such placement or visitation and communication is determined to be contrary to the health, safety, or welfare of one or more of the children, or lack of geographic proximity precludes or prevents visitation.

4. Guidance for Sibling Contacts

New York law presumes that placement or regular visitation and communication with siblings or half-siblings is in the best interests of the child and their siblings, unless such contact would be contrary to the health, safety, or welfare of any of the children, or if geographic proximity makes visitation impractical. Regulations governing placement in foster care further provide that if siblings are placed apart in foster family boarding homes or agency-operated boarding homes on an emergency basis, they must be reunited within 30 days unless it is determined that joint placement is not in the best interests of one or more of the siblings. (See SOS § 358-a(11)(b); 18 NYCRR § 431.10(c)). In addition, the Office of Family and Children's Services has issued an Administrative Directive and White Paper reiterating the importance of sibling contact and providing guidance for ensuring that sibling contact occurs. (18 NYCRR 431.10; 92-ADM-24)

5. Social Service Requirements Regarding Reporting Sibling Placement

Within thirty days of a child's removal from their home, the local social services district must conduct an assessment of the child and their family circumstances. This assessment must document the reasonable efforts made to prevent or eliminate the need for placement, the kind and level of placement and the reasons for it, whether the child will be placed with their siblings and half-siblings, and if not, the reasons for separation and the arrangements made for contact between siblings. The assessment must also identify all available placement alternatives and provide specific reasons for rejecting them. (SOS § 409-e(1)(d)). In addition, in advance of each permanency hearing held for a child in foster care, the agency having custody of the child must submit a report to the court that details the efforts made in the last six months to secure a placement for the child with a fit and willing relative including adult siblings, and a description of the visitation the child has had with any siblings. FCA § 1089(c).

6. Judicial Oversight of Sibling Placement and Contact

Judicial oversight is a cornerstone of New York's approach to sibling rights in foster care. When reviewing a petition for voluntary foster care placement, the court must consider whether the social services official has arranged for the placement of the child with any minor siblings or half-siblings who are also in care. If the children have not been placed together, the court must determine whether regular visitation and communication have been provided or arranged. If not, the court may direct the official to provide or arrange for such placement or visitation if it is in the best interests of the children. Siblings in foster care have the right to visit, which may be enforced by a child filing a motion for an order directing that visits take place. (See SOS § 358-a(11)(a)-(b); FCA § 1081; FCA § 1027-a(c); FCA § 1055(c), FCA § 1089(d)(2)(viii)(I); FCA § 1095). When a child is placed in foster care, the court must schedule the child's first

permanency hearing to coincide with the permanency hearing of any sibling who has already been placed in care. FCA § 1089(a)(2) and FCA § 1055(b)(i)(C). This helps to ensure that the court considers each siblings' placement and plans with respect to any other siblings who are also in placement.

7. Rights of Adult or Non-Party Siblings

NY statutes strive to ensure that adult siblings are considered as resources for any child who is removed from their home. "Upon the filing of an abuse or neglect petition, The child's adult sibling, who is not named as respondent in the petition, may, upon consent of the child's parent appearing in the proceeding, or where such parent has not appeared then without such consent, move to intervene in the proceeding as an interested party intervenor for the purpose of seeking temporary or permanent custody of the child, and upon the granting of such motion shall be permitted to participate in all arguments and hearings insofar as they affect the temporary custody of the child during fact-finding proceedings, and in all phases of dispositional proceedings. Such motions for intervention shall be liberally granted." FCA § 1035(f).

After a child has been placed in foster care, adult siblings (or half-siblings) and minor siblings who are not in foster care may seek visitation with the child by filing a petition alleging that visitation and contact would be in the best interest of both the child in foster care and the sibling who is seeking contact. FCA § 1081(2)(b), (c).

8. Guidance for Sibling Adoption

New York law does not contain specific statutory provisions addressing sibling adoption beyond the general requirements for placement and contact. However, the New York State Office of Family and Children's Services has published a White Paper in 2007 outlining the laws and best practices to be followed when siblings are placed for adoption. And, the law does specify that termination of parental rights with respect to a child in foster care shall not be construed to terminate any rights relating to contact with siblings. SOS § 384-b(9). For siblings who lose contact following adoption, the law provides for an adoption information registry that may be accessed by siblings to facilitate post-adoption contact. (See Public Health Law (PHL) § 4138-c).

9. Other Statutory Mentions of Siblings

New York statutes contain several references to siblings in the context of foster care and adoption. In particular, the statute governing the permanency hearings for children in foster care requires that the agency document efforts to return a child home or secure placement with a fit and willing relative, "including adult siblings" FCA § 1089(c)(1)(v). The permanency report that must be submitted in advance of the hearing must include a description of visitation plans describing the person with whom the child visits, "including any siblings" FCA § 1089(c)(2)(iv). Orders entered at the conclusion of the permanency hearing may also include encouraging and facilitating regular visitation and communication with the child by the child's siblings and may incorporate an order or sibling visitation. FCA § 1089(d)(2)(viii)(F). In addition, the adoption information registry allows siblings to access information about each other, and the statutes governing foster care and adoption consistently emphasize the importance of sibling

relationships and the need to maintain those relationships whenever possible. (See PHL § 4138-c).

10. Relationship to Federal Laws [42 U.S.C.A. 671 (a)(31)]

New York's statutory framework is consistent with federal law, specifically 42 U.S.C.A. § 671(a)(31), which requires states to make reasonable efforts to place siblings together and to provide for frequent visitation or ongoing interaction if joint placement is not possible, unless such contact would be contrary to the safety or well-being of any of the siblings.

11. Statutory Provisions That Create a Procedure or Mechanism for People to Actually Enforce Their Sibling Rights (Both Contact and Placement)

Under New York law, siblings who are not in foster care may enforce their rights to contact with their siblings, pursuant to DRL § 71. That statute allows a sibling, or a proper person on behalf of a minor sibling, to petition the court for visitation where "circumstances show that conditions exist which equity would see fit to intervene," and the court determines that such visitation is in the best interests of the child. DRL § 71. Long v. Donoghue, 167 A.D.3d 614 (2d Dept 2018).

For siblings who are in foster care, provisions of the FCA and SOS create a mechanism for the enforcement of the right to sibling contact. For instance, SOS § 358-a(11)(c), FCA § 1027(a)(c), and FCA § 1089(d)(2)(viii)(I) grant siblings the right to file a motion for placement or contact with a sibling. According to those statutes, placement or regular visitation and communication with siblings or half-siblings is presumptively in the best interest of the children, unless such placement or visitation and communication would be contrary to the health, safety or welfare of one of the children or the lack of geographic proximity precludes visitation. In addition, without the need for filing a separate motion, at the conclusion of each permanency hearing held for a child in foster care, the court may enter an order "encouraging and facilitating regular visitation and communication with the child by the child's siblings." FCA § 1089(d)(2)(viii)(f).

12. Relevant Case Law Interpreting Statutes

New York's highest court has repeatedly reiterated the general principles laid out in statute regarding the importance of sibling contact. The Court has long held, "Young brothers and sisters need each other's strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely to be traumatic and harmful". Eschbach v. Eschbach, 56 NY2d 167 (1982). Accordingly, the Court "has long recognized that it is often in the child's best interests to continue to live with his siblings." *Id*.

For children in foster care, New York courts have applied the governing statutes to hold foster care agencies to the highest standards with respect to sibling contact. In *Matter of H.R.*, 156 Misc.2d 856 594 N.Y.S.2d 968 (Fam. Ct. 1993), the Court wrote "[i]t is clear from both the statutory and regulatory language that the State of New York has a strong policy of keeping siblings together. It is this court's view that such a policy should be given the highest priority in situations such as that before the court today." *See also*, *In re Jamel B.* 2016 N.Y. Slip Op. 51454(U), 46 NYS3d 475, 53 Misc.3d 1206(A) (Fam. Ct. 2016) (Holding the foster care agency in contempt for failing to comply with a court order that siblings be placed together). However, the courts are reluctant to disrupt the placement of children who have been placed in a foster

home for a significant period of time, in order to place them with sibling they have never met. *Matter of David B.* 2 A.D.3d 725 (2d Dept. 2003).

For siblings who are not in foster care, DRL § 71 requires the court to ask whether "conditions exist which equity would see fit to intervene" with respect to sibling visitation. That question is often answered with reference to the caselaw regarding D.R.L. § 72, which predicates an order for grandparent visitation upon the same language. On a petition for sibling visitation in *Îsabel R. v. Meghan M.C.*, 2009 NY Slip Op 50554(U), 23 Misc.3d 1102(A) (Fam. Ct. 2009), the Court reiterates New York's recognition of the importance of sibling contact as reflected in case law, statute, and regulations. After explaining how the court should determine an application for sibling visitation pursuant to DRL § 71, the court finds that equity may see fit to intervene when efforts to maintain a relationship were thwarted by one sibling's parent. Keenan R. v. Julie L. 38 A.D.3d. 435 (1st Dept. 2007). However, when siblings have not had meaningful contact prior to their separation, the courts are less likely to find that "equity would see fit to intervene." *Cocose v. Diane B.*, 2005 N.Y. Slip Op. 51203(U), 803 NYS2d 17, 8 Misc.3d 1020(A) (Fam. Ct. 2005).

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