

Trista Borra: Good afternoon, everyone. My name is Trista Borra. And I serve as the director of Child Welfare and Family Justice for the Office for Justice Initiatives and as the statewide Child Welfare Court Improvement Project coordinator. Welcome to part two of our three-part series on the Family First Prevention Services Act.

Today's presentation will focus on the role and function of the Qualified Individual including required training, the structured decision-making process for the Qualified Individual, and the Qualified Residential Treatment Program. You'll learn of agencies that have received and/or are pending the QRTP accreditation and QRTP exception designation, and a map of the landscape of availability and capacity across New York State. Additionally, the Honorable Judge Pirro Bailey and the Honorable Judge Elloras-Ally will discuss the required court review of the QI assessment and determination. Before we begin today's program, I need just a minute of your time to go over some important logistical matters. Today's program materials and presenter biographies will be put in the chat. If you cannot access them, please email Sue Shafer, and her email address will be put in the chat as well and she'll send them to you. Because of the amount of information the presenters need to cover today, they may not have time to do a question and answer period at the end. But they have agreed to respond to questions in writing following the program. So if you have questions, please, note them in the chat and we'll compile and coordinate them for the presenters. And then, we'll send out an email to all registered participants after the program with the questions and answers. If you're seeking CEU credits, you should have received an email from Allison Eberle with the instructions. If you have not, please, email Allison as well. Her email address will also be put in the chat. If you are seeking CLE credits for this program, please pay close attention to the following important information. The Office for Justice Initiatives' Division of Policy and Planning has approved this program for 1.5 CLE credits in the area of professional development. The content of this program is appropriate for all attorneys. If you'll be seeking CLE credit for this program, please be advised of the following. Attendance will be documented. Attorneys should have paper and pencil ready to note the CLE code when it's presented. During the course, at least one code or perhaps more will be announced and displayed. Please, write down all codes. Immediately following the program, the evaluation should be completed. It's a link that was above today's Zoom link in the email you received for today's program. The affirmation must be completed and submitted by the end of the day. The form allows for the digital signature and has a submit button on it. If it does not work for you, you may print the form, fill it out and email the completed affirmation to [oppcle@nycourts.gov](mailto:oppcle@nycourts.gov). That email address will also be put in the chat. If you did not receive the affirmation or evaluation, please email Sue Shafer immediately. Affirmations and evaluations received after today will not be approved for CLE credit. You can expect to receive your CLE certificate via email within 30 days. Now, I have the pleasure of introducing today's presenters. We have with us today Gail Geohagen-Pratt who is an associate commissioner with the New York State Office of Children and Family Services and the Honorable Judge Pirro Bailey, a family court judge and acting supreme court justice since 2008 in Onondaga county, and the Honorable Judge Elloras-Ally, a family court judge since 2015 for

Kings County Family Court. The presenter bios will also be put in the chat. Now, I'm happy to turn it over to our first presenter, Gail. Take it away.

Gail Geohagen-Pratt: Thank you, Trista. And good afternoon, everyone. So for my portion, I will provide an overview of the Family First Legislation given a little bit of background and speaking towards the newly created congregate care settings known as Qualified Residential Treatment Programs or QRTPs as well as the role of the Qualified Individual or the QI within the Family First Legislation. I will also speak to specific protocols, policies that have been implemented by OCFS in support of the Family First Legislation. So I think for the majority of persons on this call, there is a understanding in terms of this bipartisan legislation that was in effect as of February of 2018. And it was enacted as really reforming federal financing to prioritize family-based foster care over residential care by limiting federal reimbursement for certain residential placements. There was really a focus on higher quality care in congregate care settings with a focus on the entire family for when that level of placement is required. And the goal is to reduce lengths of stay and prevent recurrence of placement and really prioritizing family-based care over congregate care. There are two major components to the Family First Legislation. There is the prevention services aspect. And so, it provides additional IV-E funding for evidence-based programs. And as a note, in order to be able to draw down those additional IV-E funds, New York must comply with the congregate care requirements which we're going to talk about more in detail. The congregate care portion of the legislation, again, it's really looking at how we currently do congregate care and looking at how to improve outcomes for youth that are placed there really ensuring that those children that are going into a congregate care level of care require that level of treatment and service intervention, and then ensuring that they're there for the amount of time that's needed in order to address those treatment needs. Within the Qualified Residential Treatment Programs which is the congregate care settings that will be established under Family First, there are specific requirements for a congregate care setting to receive the designation of a QRTP. First and foremost, they must be accredited. There were specific accrediting bodies that were identified within the Family First Legislation that agencies could utilize in order to establish accreditation. So first and foremost, if an agency wants to apply for a QRTP designation, they have to show that they have gone through the accreditation process, and that they have satisfied that requirement. In addition, the agencies that are designated as QRTPs must have a trauma-informed treatment model. And so, they have to have policies and procedures to speak to how their program is trauma-informed and trauma-responsive. And this is something that should be observable and operationalized from an administrative aspect all the way down to those staff that are direct care and interacting directly with youth and family including frontline staff, clinicians and so on. And so, as part of the process for New York State for those agencies that are seeking QRTP designation, that is part of what we're reviewing, is in terms of their policies and procedures. How is it that they are demonstrating that they are providing the services in a trauma-informed and responsive approach? Additionally, there is a requirement that there is availability and accessibility of clinical and nursing resources 24/7.

So, again, an agency that is seeking QRTP designation does need to have licensed clinical staff and nursing staff available 24/7. The legislation also emphasized that there is discharge planning that the QRTP must engage in discharge planning, and that it is a action that requires engagement with the youth and the family and that it needs to be family-centered and strength based. That is not necessarily something new, but it is certainly something that is emphasized within the Family First Legislation. Additionally, it does require that a QRTP needs to provide six months of aftercare upon a youth discharge from that program. And I just want to emphasize that in terms of that discharge, it applies in situations where the youth is either discharged home, or it also applies when a youth is just stepped down from the QRTP into a family-based setting. In both of those aspects, the QRTP is required to provide a minimum of six months of aftercare support for that youth and family. In regards to the aftercare, one of the questions that has come up as we have been doing implementation of Family First is what if a family, it does not want to participate in the aftercare services? What the messaging has been is that there really needs to be demonstrated a diligence of effort in engaging the family and child in the aftercare services especially if those engagements are starting from the time that the child is placed in the QRTP; that engagement in terms of the supports is not really at the time that the child is being discharged, but really at the time that the child is placed that those efforts in terms of engagement should be beginning in order to support the likelihood of the engagement in those aftercare supports at the time of discharge. So in addition to the QRTPs, there are also what's known as QRTP exceptions that have been established under the Family First Legislation. And these are specialized congregate care programs that are also eligible for... eligible, excuse me, for IV-E reimbursement. And there are three specific settings. There is the prenatal postpartum or parenting supports or the PPP programs. There is the empower, what we are naming the Empower Programs, which are the settings that provide high-quality residential and supportive services to children who are survivors of or at risk of being victims of human trafficking. They're currently known as our CSEC Programs, but under Family First, we have named them Empower Programs. Additionally, there are the supervised settings where a youth that's 18 years or older is able to live independently. So under Family First, we've been able to look at expanding those settings and really supporting normative experiences by expanding our supervised settings to include places such as dormitories on campuses, housing within the community with other youth that are not in foster care, really supporting what are more normative experiences for our older youth in care, so it is more aligned with what their peers are experiencing as well. I just want to highlight that under Family First, it does not change the existing IV-E reimbursement or requirements as it pertains to family-based settings. So that's our foster boarding homes as well as our therapeutic foster homes. There are no changes in regards to the Family First Legislation and what IV-E reimbursement or any of the other statutes or regulations as it pertains to foster boarding home. Again, with the Family First Legislation, there really is an emphasis that if a child does need to come into care that we are prioritizing family-based settings. OCFS has issued a policy in regards to prioritizing kinship resources when a child may be in need of

placement out of the home. We issued a Kin-First Firewall policy in November of 2020 and that is available on our website. We've held webinars and technical assistance workshops with local districts to provide guidance additional guidance and support and structure on prioritizing kinship when there is a need for a child to be placed out of their home. Besides the family-based setting there and QRTPs and QRTP exceptions, if a program is not in one of those categories, so if you have a setting that's not a family-based setting, it is not a QRTP or a QRTP exceptions as of September 29, 2021 when Family First becomes effective in New York State, those settings will now be categorized as non-specified settings. And what that means is that if a child is placed in one of those settings effective on or after September 29, 2021, that is now categorized as a non-specified setting and a child that is otherwise eligible for IV-E will have a maximum of 14 days of reimbursement in that type of a setting. So there's been a lot of work that has been happening internally in order to be prepared for youth for Family First becoming effective September 29th in New York State next Wednesday. So we've been actively reviewing applications that have been submitted by programs that are seeking QRTP designation. To date, there have been 55 agencies that have submitted applications, and those 55 agencies are representative of over 200 programs. This is a daily process that is happening in terms of the approval. And those numbers are increasing on a daily basis. At the end of this week we anticipate being able to provide to the field a comprehensive list of those agencies that have been approved for QRTP or QRTP exception programs and those that are still pending. But certainly, districts and agencies will have access to that information to know which are the agencies that have been designated. I just want to note for those children that are in a congregate care setting prior to September 29th, the Family First Legislation and the requirements are not triggered. So in terms of the Family First requirements that I'll be speaking about momentarily in terms of the Qualified Individual conducting an assessment, those requirements are not triggered for a child that's already in that placement prior to September 29th. On or after September 29th, those Family First requirements are triggered for a child that is placed in a QRTP or is being considered for placement in a QRTP. So as mentioned with the Family First Legislation, when a child is being considered for a QRTP or is placed in a QRTP, it does require that there is an assessment that is conducted by what is known as a Qualified Individual or a QI. For New York State, we have established that, for the QI, they will be a licensed clinician with a minimum of two years of child welfare experience, and that experience has occurred within the past 15 years. And the role and function of the QI is to assess and determine the appropriate level of care for that child. It is important that the QI have objectivity. So we've also established parameters here that the QI cannot be employed or associated with a QRTP where that youth is referred. Additionally, the QI cannot be the case manager or have case planning decision-making for that child that they are providing the assessments. As part of the requirements of the Family First Legislation, the QI is required to administer a functional behavioral assessment tool. In New York State, we have identified the CANS, the Child and Adolescent Needs and Strengths Instrument, as well as the CASII, the Child and Adolescent Services Intensity Instrument. These are the two functional behavioral assessment tools

that the QI can utilize as part of their assessment process. I do want to emphasize that it is not solely just administering the functional behavioral assessment that comprises that assessment that the QI needs to facilitate. There are a number of components that the QI must meet which we're going to speak about momentarily. Per the legislation, the QI needs to conduct interviews with the family and the youth as part of that assessment process, and we have emphasized that those interviews we're prioritizing that they occur face to face. We recognize that there may be some barriers in terms of our current environment and with COVID and other challenges that may arise. But the expectation is that those assessments especially when it comes to the interviews with the family and the child that they are occurring face-to-face.

Additionally, the QI is required to meet with the child and family permanency team. And so, that is an additional component in regards to the QI facilitating their review. And at the end that they are providing recommendations, whether or not the child's needs can be met by family members or through a placement in a family boarding home, again, the emphasis is on family-based setting, and if a child's needs cannot be met in a family-based setting, then, they need to identify why that is, and what is the appropriate level of care for that child and why that is. To support that process, we have developed a report template that provides that framework in terms of the information that is needed in there. So specifically, the QI will document what level of care is the most effective and appropriate level of care in the least restrictive environment that is emphasized that it is always about the least restrictive environment in order to meet the needs of the child.

So the QI will be providing feedback in regards to what is the most effective and appropriate level of care for the child in the least restrictive environment and it must be consistent with short-term and long-term goals that are specified in the child's permanency plan. So, again, this is a component of the QI's assessment in terms of identifying those short and long-term goals that there is alignment with the child's permanency plan and what is the setting that is most effective and appropriate level of care in the least restrictive environment. If the QI is recommending a QRTP, they need to speak to why is it that level of care provides the most effective and appropriate level of care in the least restrictive environment. You see a theme here. Additionally, they are again incorporating how the placement is consistent with the short-term and long-term mental and behavioral goals that is specified in the permanency plan. So there is alignment in terms of the child's permanency plan and their treatment needs and that needs to be addressed within the assessment that the QI is completing.

Once the QI has completed their assessment, it must be done timely within 30 days. Again, it can be done prior to, 30 days prior to, placement in the QRTP. But it must be completed within 30 days of placement in the QRTP. Of note, from a IV-E standpoint, if that assessment is not completed timely, there is no IV-E reimbursement for the entirety of that placement in that QRTP. So there really is an emphasis on the assessment being completed timely. Once the QI has completed their assessment, within five days it needs to be forwarded to the LDSS. From there, the LDSS will provide the copy of the assessment to those parties that have been identified in the legislation that are entitled to receive it. Specifically, it is the court, the child's

parent or guardian or the child's attorney... excuse me, or the parent's attorney if applicable. Additionally, the QI needs to provide a written summary detailing the assessment findings to the LDSS or OCFS, so the entity with care and custody and guardianship of the child as well as parties to the proceeding. And there's also requirement that information is redacted as necessary to comply with federal and New York State confidentiality laws. What we have messaged is that this is in terms of the parties to the proceeding that really entails the QI and the LDSS having communication to determine who those entities that would meet that parameter in terms of being parties to a proceeding we recognize that, depending on the circumstances, there will be variability in regards to that. Additionally, all information regarding the decision around the child and whether or not there is a recommendation for a QRTP must be documented in the child's case plan. To support the work of the QI, we are currently do providing training that all individuals that districts have contracted with to facilitate the role and function of the QI must participate in as part of being able to provide that role and function. So we have four sessions that have been scheduled. The first one started yesterday. And we have, at this time, close to 160 persons that are participating in that training to facilitate the role and function of the QI here in New York State. Additionally, we have provided a model contract for agencies to be able to use that will support their being able to contract the services of the QI. We also have developed a QI report template and that is to support a structured decision-making process by the QI. It incorporates the requirements of the legislation. It speaks to what are the short and long-term goals. It speaks to who was interviewed as part of this process. It speaks to why the needs of this child not be met with the family or in a family-based setting. And it speaks to why it is that a QRTP is the appropriate setting for this child. So that is information that will be documented as part of the QI report template. Additionally, we have developed the CANS algorithm and have developed a training and a Excel spreadsheet to support the information as for the QI when they are administering the CANS assessment. Once the QI provides the completed 30-day assessment to the LDSS and it is forwarded on to the parties that it needs to be provided to, there is a requirement for a 60-day court review. And I believe our two judges are going to speak more to that process. And so, in terms of that, I'm going to leave it to the judges to go into more details about that because I don't want to be redundant. I do want to make note that besides the 30-day assessment and the 60-day court review, the next threshold for assessing a child's placement in a QRTP is what's known as a long-stayer threshold, specifically for children that are placed in a QRTP under the age of 13, that long-stayer threshold is at six months consecutive or non-consecutive, and for youth 13 or older, that long-stay review threshold is at 12 months consecutive or 18 months non-consecutive. And at those thresholds, it does require that there is a review of the progress of that child's placement in the QRTP to determine whether or not there is a need for their continued state. Again the Family First Legislation wants to limit the use of congregate care setting and the length of stay. So for New York State, we have identified a two-tiered process for the long-stayer review. It starts with a review by the local DSS that the QI can be a part of the process or the LDSS may utilize a cross systems team. They are going to review the

treatment progress of that child, what is required on that first tier is a review of the child's progress and a determination as to whether or not there are treatment needs, unmet treatment needs, that would require that the child remain in that QRTP beyond the long-stayer threshold. If the district determines that there is a need for that, then, it is forwarded to the state level where there is a second-layer tier review by the state team which is comprised of OCFS and other state partners to review the information that is sent in regards to requesting that that child remain in the QRTP beyond that long-stayer threshold. The state team will review the information which will be forwarded to the commissioner or her designee as a state and a QRTP beyond those thresholds does require approval from the commissioner. And so, once that review has been completed and the commissioner has provided a response or her designee, then, that will be communicated back to the district in regards to whether or not it is approved. In any circumstance whether it's at the 30-day assessment and where the QI may determine that it is not appropriate for a child to be in a QRTP that is not the appropriate level of care, or at the long-stayer review if it's determined that there is no longer a treatment need for that child to be in the QRTP, it is the expectation that the child is moved to a setting that aligns with the least restrictive level of care and is in align with the level of treatment intervention that is needed. Okay. I'm going to pause. And I am going to turn it over to, I believe, it's the Honorable Judge Pirro Bailey.

Trista: So the first CLE code is 772s. It's on your screen. If you can't see it, it's 772 lowercase s.

Judge Pirro Bailey: Good afternoon everyone, and thank you for joining us today. The Family First Preventive Services Act, Family First, goes into effect in eight short days. Are you ready? Will there be forms for that? Relax. Yes, they're being finalized at this time. And in addition to the statute and forms, Rule 205.18 of the Uniform Rules of Family Court will give you guidance. Does QI plus FC equal QRTP? Well, let's see. Family First applies to every kind of court case where there is a placement of a child in a Qualified Residential Treatment Program, QRTP. That includes all removals, all abuse, neglect, destitute child proceedings, also free child proceedings which include TPRs and surrenders, it applies to juvenile delinquency proceedings including juvenile cases that are removed from the criminal courts to family court. Those proceedings may also include violations of probation, conditional discharge, or placement. It applies to PINS proceedings, persons in need of supervision. Those proceedings may include violations of various orders of disposition. Voluntary placements, applications for return of youth to foster care, and permanency hearings and extension of placement hearings. Family First applies to modification, violation, and extension of placement petitions. Essentially whenever a child who is under the jurisdiction of the family court is or is recommended to be placed in a QRTP, the requirements of this law will apply. Some of the purposes of Family First are to improve the quality of group and congregate care settings and to provide court review for children placed in non-family or congregate foster care settings. Starting September 29th, the family court must be involved in the decision whether to place or to continue the placement of a child in a QRTP. And strict time periods apply within which certain actions must be taken. As of next

Wednesday, if there's a plan to move a child to or if a child becomes placed in a QRTP, the placing agency which is, of course, ACS, the local DSS or OCFS, they are required to do the following and the statute says shall. They are to give notice to the court and the attorneys for the parties including the attorney for the child forthwith. That means right then, immediately, not when you get around to filling out the paperwork. And the statute requires that it be not later than one business day following either the decision to place the child in the QRTP or the actual date the placement change occurs, whichever is sooner. And the agency is required to file a motion seeking a review and approval of the child's actual or proposed placement in the QRTP. As Gail described earlier, the agency will enlist a Qualified Individual, the QI, to conduct an assessment of the child and the proposed QRTP and provide a written report for review and consideration by the parties and the court. This assessment is to be completed prior to the placement if possible, but at least within 30 days of the start of the placement in the QRTP. Under the Uniform Rule Family Court rule 205.18, the agency shall submit the assessment report to the court and serve or securely send a copy to the parties, their counsel, and the attorney for the child no later than five days after completion of the report, but in no event less than 10 days prior to the first scheduled hearing at which a placement determination will be made. Everyone needs the report to make a fully informed decision.

The agency requesting placement in a QRTP must also file a motion or petition requesting a court hearing on the placement. Pursuant to the rule, the application is to be filed prior to or no later than five days after entry of the child into placement. The agency is responsible for serving or securely sending notice of the date, the time and the court part in which the case will be heard, and that notice needs to be sent to all counsel, the parties, the attorney for the child and any child who is 10 years old or older. The QI report may be filed with the motion or petition or thereafter, but not less than 10 days before the scheduled hearing. This is in recognition that the report may not be completed prior to the filing of the motion for approval of the QRTP placement, but that the report, of course, is necessary for the complete information and determination of the application. So what should the motion or the petition say? The required information can be included as part of any other petition as well as in a permanency report or alone when the agency is seeking placement in a QRTP. So for example, if you are filing a petition seeking removal on a neglect matter, you may include the information and application for the approval of the QRT placement... excuse me, in that petition. The same thing goes for juvenile delinquency or a modification of placement petition. You need not always file a separate motion or petition. However, there will be forms for those situations when it's say in between permanency hearings, and there needs to be a change or a request for a change to a QRTP and then you can do it as a standalone motion or petition. Your application should state the date of removal of the child from home and where the child was most recently placed and when. Give information about the status of the pending case, for example, the most recent court action, the date of the fact-finding, the disposition, and the most recent permanency hearing if applicable. The application should outline the permanency plan for the child. And as Gail noted, it should and requires that you specifically state the needs of the child that

require a higher level of care than a foster or therapeutic foster home. Identify the requested QRTP. Affirm that the child's needs have been assessed by a QI, and that there is or will be a report. If applicable, you need to specify the circumstances that necessitate the continued placement in the QRTP and state why there's no alternative... excuse me. I just went a little too far here. Statewide, there's no alternative setting available that can meet the child's needs in a less restrictive environment. And, remember, the lack of foster homes is not an excuse. It cannot be an excuse for why the QRTP is appropriate.

Specifically, with respect to article 10 and freed children, the application should state the reasons why continued placement in the QRTP is in the child's best interests. For juvenile delinquency cases, the application should state the reasons why continued placement serves the child's needs and best interests or the need for protection of the community. And for PINS cases, the application should state the reasons why it would be contrary to the welfare of the child to be placed in a less restrictive setting and that continued placement in the QRTP is in the child's best interest. Again, the forms are forthcoming, and I've had the opportunity to review them. They are very detailed and you'll be able to follow them along and to respond with the appropriate information to give both the parties, the attorneys, and the court enough information to make a good decision for the subject child. So once the motion or petition is filed, the court must schedule a review and complete the hearing within 60 days of the placement in the QRTP. The statute does not have a good cause for adjournment provision. So that's a strict time period. When the application is filed, the courts should be scheduling well before the 60 days to allow for any adjournments that may need to occur, but if the hearing is not completed within the 60 days of the placement, it has financial implications. If the court does not approve the placement within the 60-day time frame, the title IV-E agency may only claim foster care placement maintenance payments for the first 60 days of the placement in the QRTP. And just like you can make an application for approval of placement in a QRTP within another petition, the approval hearing may be combined with another hearing in a given case as long as it's completed within the 60 days of the start of the placement in the QRTP. So it's appropriate to hear information about the application for QRTP placement approval at a dispositional hearing. It is certainly appropriate to hear it along with a permanency hearing or an extension of placement hearing. On the motion of the court after everything is filed including the QI report on the motion of the court, the parties, or the attorney for the child, the court can make its determination based upon the application and supporting documents if all the parties consent. This could happen if everyone was expecting an application to come for a QRTP, perhaps at an earlier permanency hearing, or any appearance frankly there was a discussion that the child needed the services of a QRTP, and, maybe, there was even discussion about certain QRTPs that might be appropriate and when the paperwork came in, everyone was in agreement, then, no hearing would be required. The parties could consent to have the decision made on the papers. However, it is still the court's responsibility to assess and determine whether the consent is knowingly and voluntarily given. The question being is there really consent. And that, of course, will be a determination made on a case-by-case basis. If the

decision is made on papers, then the court must issue a written order within five days specifying the determinations it has made and the agency must document the court's determination in the child's and the parent or guardian's case records. Finally, there are additional requirements for extensions of placement and permanency hearings. If the QRTP placement continues, the agency must justify keeping the child in this congregate setting. Again, the court Rule 205.18 requires the agency to submit a new QI assessment report for each permanency hearing or extension of placement application. That is when the child is in a QRTP or going to a QRTP, continuing in a QRTP. This report is required to contain all of the information that is also required in an original assessment report. As you will recall, the goal, and Gail pointed out, the goal is to keep children, to place children, in the least restrictive settings. So our job, if you will, for all of us is to continue to look at whether or not the congregate care is appropriate over time. The Family First statute requires the agency to submit evidence at each review and the permanency hearing with respect to the child specifically that demonstrates that there's been an ongoing assessment of the strengths and needs of the child, and that continues to support the determination that the needs of the child cannot be met through placement in a foster family home. The evidence should also document specific treatment or service needs that will be met in the placement, and the length of time the child is expected to need the treatment or services. The evidence should document the efforts made by the agency to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, an adoptive parent or in a foster family home. All of this information can and should be included in the permanency report. So does QI, Qualified Individual, plus FC, family court, equal QRTP, Qualified Residential Treatment Program? Yes. No. Sometimes. Judge Elloras-Ally will explain. But before she does, I think that we will receive the second CLE code. Thank you, everyone.

Trista: Here we go. Here we go. Okay. So the second CLE code is lowercase g, lowercase j, 9, and lowercase k. Again, that's all lowercase letters gj9 and k. So as many of us may have experienced over the last year and a half or so, technology can be wonderful and it can also be not so wonderful. So in the meantime, we have unfortunately lost Judge Judge Elloras-Ally due to some technology difficulty. She's trying to get back in at the moment. So Judge Pirro Bailey, how would you like to proceed? Is it something that you can continue until she gets back on or should we...

Judge Pirro Bailey: Let me see. I could hopefully do some justice to her PowerPoint, if you want, or we could also... I didn't know if were there any specific questions from my presentation because I see I did have a couple extra minutes. And, maybe, that would give her time to sign back on.

Trista: Sure. So a couple of questions. One, having to do with the court rule and accessing it. So we can add a copy of the court rules to the materials and send that out in an email. So folks will get that. And another question actually is in terms of whose consent must be knowing voluntary and intelligent, the child or parents, and DSS if child is a free child.

Judge Pirro Bailey: Well, I mean, certainly, the parents and the requirements that the AFC represent the child's wishes. I suspect if the child was not in agreement with the QRTP that the AFC would be advocating for something different than what's proposed.

Trista: Okay. Thank you. Next question, for the long-stayer reviews, should the team's assessment be completed well before the 6 and 12 month fresh thresholds? Excuse me.

Judge Pirro Bailey: I'm not qualified to answer that. Gail.

Gail: I'm sorry, Judge. Could you repeat the question, please?

Trista: Sure. The question refers to long-stayer reviews and should the team assessment be completed well before the sixth and twelfth month thresholds.

Gail: So as part of the protocol, what we have established is that the review should commence to 60 days or approximately two months before coming up on that long-stayer review threshold. So we'll start with we'll use the scenario where a child is placed on September 29th. That's under the age of 13, and they're in the QRTP for six months consecutively. So that would make their long-stayer threshold as of April 1st, 2022. So that review for the long stayer and determining whether or not there is going to be a need for a stay beyond that long-stayer threshold should commence as of February 1st, no later than February 1st, 2022. So there's a 60 days prior to coming up on that threshold that, that review should commence. And that allows time for the local review to occur as well as for the state review to occur and to provide a response that will meet that date for when that threshold is hit.

Trista: Okay. Thank you, Gail. Actually, as long as we have you, there is another question specifically for you-

Gail.: Sure.

Trista: If that's okay. Did you indicate that those youth placed in congregate care prior to September 29th are not subject to a QI review? And then, there's kind of clarification. We understood that any child currently placed in an agency that is not certified as a QRTP on September 29th will not be grandfathered in as a IV-E eligible placement at that agency. So the child would have to be discharged in the system and replaced into a QRTP agency with the requisite QI assessment court dates, et cetera. The youth will only be eligible for IV-E reimbursements for two weeks post-9/29 if they remain in that agency. And can you clarify?

Gail: Sure. So as prior to 9/29, any child that is in a congregate care setting, so 9/29 is a date that those that meet the requirements become a QRTP. Any child that is in a congregate care setting prior to 9/29 is vested. They're grandfathered in. And as long as they have otherwise, there's always a caveat that they're otherwise eligible or in meeting the IV-E requirements. So any child that is in a setting prior to 9/29 is grandfathered in, they're vested. Now, what happens on or after 29, if

that child now goes AWOL, for example, and they are absent from that QRTP for 14 or more days, and they return to that QRTP, they are no longer in their grandfathered status. So at that point in time, the requirements for Family First would be triggered and there would be a need for an assessment by a QI.

Similarly, if that same child is in that setting prior to 9/29 they're grandfathered in, on or after 9/29, if they move to another setting that's a QRTP, then, yes, the Family First requirements are triggered. But prior to 9/29, they are grandfathered in subsequent to 9/29 or thereafter if there is a change in their status, depending on what the circumstance is, it may require an assessment by a QI.

Trista: Great. Thank you, Gail. And I see we have Judge Elloras-Ally with us, thankfully. I'm so happy you made it back.

Judge Elloras-Ally: So sorry. This sort of feels like what happens in real life with technology. So we had an outage at the courthouse for about 20 minutes, but we're back, I'm told s I'm hopeful. So, my apologies to the participants. I don't think I've ever had a more stressful presentation hoping and wondering if I would get on. So thank you for fulfilling the time and maybe taking a couple of questions. So I'm going to talk about... Judge Pirro Bailey, did you talk about hearings and so, I'm just going to talk about the orders? Okay. So I'm going to talk about sort of you've had the QI's report. You have all this information. The motions are filed. You're sort of, "What's going to happen next in court, right?" And what does the court's obligation look like? So in thinking about this, I sort of broke it down into four scenarios. So you'll get the slide presentation, and you can flip through. So there are what I would call four scenarios. The QI says, "Yes, the child needs the QRPT," and the court agrees and that's one scenario. It seems harmonious. And it's probably the easiest one to talk about. The next one may be where the QI says, "We don't think that this child needs this placement or it's not called for." But the court where the QI recommends a placement in the court doesn't agree. So that's another scenario. There could be the third scenario where the QI does not recommend the placements and the court doesn't think the placement is warranted. And the last scenario is the QI determines the QRTP is not required, but the court then decides or approves it. So I'm going to go a little bit through those types of scenarios and sort of what the court's responsibility is in the order. So I'll start with the first one which I think is the easiest which I'll call scenario one. The QI believes and recommends that this QRPT is what the child needs. And it may be that everyone agrees and perhaps Judge Pirro Bailey talked about maybe it'll be done on motion. If everyone's agreeing, the court still may want to hear or talk to the parties and get a couple more facts. But by and large, if the court approves it as well, what does the court need to do? This is a couple of things. So first, the court has to find that there's no foster home that can meet the child's needs. The court is required to do that because Family First is about trying to move children out of congregate care in a family setting. So the court has to make that determination. And there should have been evidence at the hearing to give to the court to explain why that can't happen for this child. We have to find that the placement in the QRPT is the most effective and appropriate level of care in the least restrictive

environment. So these are words that Gail spoke about. So it's sort of a theme. We're making these findings as we're approving these placements. And we have to find that placement, the placement in the QRTP, is consistent with the long-term and short-term permanency goals that are identified in the permanency planning. So that seems harmonious. Everyone's agreeing. The court is approving. Just to fast forward, you know the court can check in. There might be reports you want because, as the judge, you just may want to know what's happening with a particular child, or you may be addressing it at the next permanency hearing. So that doesn't end the inquiry. If you have permanency in the child still on this placement, we'll talk about a couple of things that have to happen at permanency. So that's scenario one which I think is the easiest. Everyone agrees that this is the placement for the child. Scenario two, as I call it, is when the Qualified Individual recommends placement, but the court doesn't approve it. So then, what findings? What is the court doing? What orders are we putting in writing? The court has to find that the needs of the child can be met through foster home placement. So I imagine at the hearing, there must have been something presented to the court to make that finding. Maybe, there's a home. Maybe, there's a relative. But you have to affirmatively make that determination in your decision, and the court has to find that the placement in the QRPT does not provide the most effective level of care, an appropriate level, and it is not the least restrictive environment, and that the placement is not consistent with the child's long-term and short-term permanency planning goals. So from my perspective, as a judge, when I'm hearing the hearing, I want to be able to answer these questions or get enough information because I'm going to have to answer these questions if I'm going to say, "I'm not approving it, but the QI thinks this is the appropriate placement." A couple of other things you have to do, the court must determine a schedule for the return of the child to another placement and can direct that DSS, local DSS, or OCFS, if that applies, or ACS here in the city where I sit, make other arrangements that are appropriate for the child in the best interest and the most effective and least restrictive placement that the case may require. So there might be a lot of discussion about what that looks like for this child.

And if the court needs to, we should be issuing a new placement order. So if there was a particular order that the child be at this placement before or a different placement, you might have to adjust your orders. So from my perspective, when I'm thinking about this happening next week, all of these scenarios are probably on the table once you know what the QI is recommending. So you have to think about what evidence if it's a hearing, if there's a dispute, what are you looking for? What information is being provided to the court to help, if we want to make this decision, have those facts to be able to support that determination? So that's scenario two. So you have a couple of additional findings that you can expect the judges are going to be making in deciding whether or not to approve it or not approve it. That's what I call scenario two. Scenario three is the QI does not recommend placement, and the court does not approve placement. Seems a little bit harmonious as well. No one thinks that this is the right setting, right? Again, there's got to be this theme. The court has to find that the child's needs can be met through a foster home. So, hopefully, during the hearing, we've had some foster home identified

or there's a plan for this child that the placement does not provide the most effective and appropriate level of care in the least restrictive environment, and that placement is not consistent with the long and short-term goals of permanency, and the court has a couple of other requirements. Figure out a schedule for the return of the child. So where's the child going? Figure that out and/or direct. You can direct the local DSS or OCFS or ACS in the city to make other arrangements for the child and you have to make sure that it's in the child's care welfare and the best interest and the most effective least restrictive setting. So again, when the hearing is happening, if I were the jurist or what I'd be hoping to do is know that these are the factors in all of the findings that I might need to require and figure out what is the evidence that might best fit for me to make these determination. As Gail had said, a lot of what the QI is going to do they have to fill out this assessment. And so, a lot of these questions may be answered in the report. So we might get a lot of information from that, but to the extent that there's a real dispute, someone might provide you with other additional information to make a judge feel that the decision should be something other than what the QI is requiring. But this one, it seems that scenario three, the QI and the judge are on the same page were not approving and so we're making all of these findings to try and ensure that it's explained why we're making these orders. Scenario four is probably the one where the judge has a lot of work to do and a lot of explaining to do, right? And this is new law. This is probably the most sweeping law we've had since permanency hearings happened if you were part of that. And it's new. So what I think is the answer on a case, the appellate division may say, "No, you're wrong," or when different judge might take as a factor to use in their decision might look a little different. So we're all doing this together. And we're learning as we go along. And I expect we'll have more answers a few months out when we get some appellate decisions to tell us sort of how this really works. But to the extent that scenario four, the Qualified Individual does not recommend placement, but the court approves it. So the judges have what I would say is a lot of them explaining and writing to do in this scenario. So you have to find that the needs cannot be met through a foster home. We're always looking at could this child be placed in a foster care setting not in a group congregate care setting. So you have to make that affirmative determination. And again, when you're taking notes or you're getting your evidence or you're getting your assessments, you might be getting that you need that information. So hopefully, someone's presented it to you to lead you to this decision, that the placement in the QRTP provides the most effective and appropriate level care in the least restrictive environment. So there will be a lot of information about should be prepared to answer why are you putting the child or proving the QRTP when the QI did an assessment and said, "We don't believe this is the right setting." The court has to answer the question and explain that what that this placement is consistent with the long and short-term goals of permanency. So you should again be prepared... We should be prepared to answer that question. And then, there are a lot more requirements. So if the court approves a placement and the qualified individual did not think that QRTP placement was the appropriate setting, then the court has a couple of more things to do. One, it has to be in a written order. So I think we're going to have

orders on everything. But this might be the one where the judges are going to spend a little bit more time writing and thinking and making sure if this is what they think is appropriate be able to explain why we think this is the appropriate order. Okay. Circumstances exist that necessitate the continued placement in the QRTP. So I'm hoping if this is what you're proving, you've gotten this information. Maybe, someone testified. Maybe, there's some information about presented. You have to be able to answer that question. The court has to determine that there's not another alternative setting available that can meet the child's needs in a less restrictive environment. So there should be information provided either through the QI report or maybe other information provided that you're going to be able to answer that question. And then there are additional findings that are going to be case specific. And I think when we start talking about different cases, you'll see that it's very familiar because it comes from language we use at different stages of cases. So in article 3 cases, juvenile delinquency cases, if you are approving the QRTP and the QI said it's not appropriate placement, you have to make the following findings. Continued placement serves the respondent's needs and best interests or the need of the protection of the community. Sounds very familiar what we're doing at dispo on a juvenile delinquency. So you have to affirmatively indicate that if you're handling a juvenile delinquency QRTP issue. Where you're talking about PINS cases, article 7. I don't know how many of these we're going to see, but you might see them. You have to make the following findings in addition to all the findings we already discussed. So it's not just this finding. It's all those findings PLUS for this particular category of cases. Contrary to the welfare of the respondent to be placed in a less restrictive setting and continued placement in the QRTP is in the respondent's best interest. So you have to be able to make those findings as well. In article 10, 10b, 10c, social service law 358-a cases, the court also has to make this additional finding, that continued placement in the QRTP is in the child's best interest. And that sounds very familiar from article 10 in a lot of the hearings and dispositional orders. And the court is required in the order there must be specific reasons and specific findings that you're making to support all of this determination that you've made. So, you know, I imagine that different attorneys are going to start thinking about what the hearing looks like and how they're presenting the information and perhaps when summing up might draw the court's attention to this piece of information if they're trying to find best interest in an article 10 where the QI said, "No QRTP", but the court, they're trying to encourage and the court wants to come to the conclusion of approval. So I think it could be interesting to see how the hearings happen. I think probably Judge Bailey said this, there's not a real prescribed detail about what the hearing has to look like. So I think this is where an area of law might be made. Was that a hearing? Was it enough of a hearing? Is it too much of a hearing. And they think different counties are going to handle it differently. But I would say that jurists want to have sufficient information to be able to make whatever determination they think is appropriate based on the evidence presented and recognizing that depending on what the QI's recommendation was, the court's going to either approve or not approve, but then, we have to be able to justify our decision, I believe. And I think it's important to say like any case where children are in placement, that doesn't end

the inquiry. You can ask for reports. Judges might ask for reports as just a general rule, particularly cases where maybe children have a lot more issues or need more services or you just want more oversight. So it doesn't end the inquiry. The court can ask for a report just to check in. And then, these children are in placement, right. So there's going to be a permanency hearing. So permanency hearing if the child remains in the QRTP, if we've approved it, and they remain there at permanency, there has to be some questions answered besides the normal permanency things we're approving goals and reasonable efforts and perhaps directing parents to cooperate with certain services. There needs to be information provided to the court that demonstrates that ongoing assessment of strengths and needs of the child cannot be met through a foster home, right. So we're always back to looking at can this child be stepped down? Can we place this child in a familial setting which is what Family First is about?

If they have to be removed, we would like these children to be with family settings or family. So you have to think about that at permanency. You had a QRTP sort of hearing. You decided they needed to be there. But at permanency, we have to really again think about it and look at it. I'm not saying there needs to be a full assessment. But answering the questions about, is this still necessary? We have to be able to determine that the QRTP provides the most effective and appropriate level of care and the least restrictive placement which is what we did in the initial finding, but we're again thinking about this, looking at this, revealing and checking in, and making sure that this is still the appropriate place for the child. We're required to also have information. Placement is consistent with short-term and long-term goals of the permanency plan, right. That was also in the initial hearing. But at permanency, we're reaffirming that we've looked at this. And we're thinking about the placement and the child and what are their goals long term. We have to, there should be information provided to the court documenting specific treatment and the service needs that will be met for the child during the placement, and the length of time the child's expected to need those treatments or services. So at permanency, you get the permanency report. You're learning about and you know what the child's already had, but now, we're looking long-term what does this look like for this child? Is this going to be the long-term plan or maybe how much longer does a child need this setting to meet treatment goals? And then, what's the next steps? And then, there needs to be information about efforts to prepare the child to return home or to be placed with a fit and willing relative or a foster placement, right. So we're then looking at, so, what needs to happen? How are we preparing for the step down because the goal is children shouldn't be in QRTPs forever that there might be a treatment need and treatment goal and we want them to hopefully meet those needs, be able to effectively have treatment so that they can be stepped down and be in a foster care setting with foster care families or kin that maybe available to them.

So I know it's a lot of information. The slides are very detailed. I hope they're helpful on this point as either judges are preparing for their first hearings could be. In the next couple of days, I expect we'll have motions and hearings thereafter. Or attorneys preparing. If you're getting the QI's assessment and you're trying to strategize about how you're going to present certain evidence for the judge and what you think your client would like.

I will say in the city, in New York City, I think we might have a lot of hearings. We do have a lot of attorneys for the child always asking the court get involved in what the level of placement is and we talk about that. So I don't expect that it will be a lot on consent. I think we will have some cases which are clear about a child needing a certain placement. But I think we might find ourselves with a lot of hearings on issues and trying to navigate a new law and trying to make the best decisions for children based on the evidence presented. So I'm hopeful that the slides and the scenarios when you get a chance to look through, it will sort of help maybe attorneys strategize how to present their cases or evidence to persuade a judge one way or the other. And also, I think it will help ensuring that we the court is at least taking a look at children who are in these types of settings to really try and ensure that it's the right setting for them. Thank you.

Trista: Thank you, Judge. So it's 1:49. And so, we do have a few minutes left. Is it okay if I pose a couple of the questions from the chat? Yeah. Okay. Great. So there are a few I have here. One of the questions is if a child is placed in a QRTP at the permanency hearing, is a new QI assessment required?

Judge Elloras-Ally: So my initial thought is I don't believe that, at permanency hearing, I would be placing a child because I think that would be the agency or the district is planning. And so, they will have had the QI assessment. So if the assessment has been done, it can be combined with permanency to approve it and do permanency. But I don't believe from my reading of the statute, if it's my first permanency hearing and they say, "Judge, and we want to place John at this QRTP," I don't think I can do it without the assessment. So I think it depends if the agency had been planning and did all of the steps and noticed and we're ready to combine the hearing, is how I see it. But I'll let one of my co-presenters tell me if you have a thoughts on it.

Judge Pirro Bailey: I agree.

Trista: Gail, did you want to add anything or-

Gail: Sure. I thought Judge Pirro was speaking. So to the point that Judge Elloras was making that if that information is going to be presented at the time of the permanency hearing that there's a recommendation for the QRTP, then, the district actually would have had the opportunity to actually have a QI facilitate an assessment because the legislation does speak to either prior to placement in the QRTP or at the time of placement in the QRTP is when the assessment is required. Judge Elloras said she would not place, but in the circumstance if the court were to make a placement decision in the QRTP within that permanency hearing, then, it would trigger that an assessment would need to be completed within 30 days of that placement if that circumstance were to occur.

Trista: Great. Thank you. Did either judges want to add anything to that or... Good. Okay. I know there are lots of kind of comments in the chat about the materials. So the PowerPoints were emailed out in advance. If you did not receive them or feel

like you didn't see them, they may have ended up in your junk mail. But we will also resend them out after this. So they will be available for everyone. We have a few minutes left. Also, I think it was mentioned prior that the court has promulgated new forms, new orders that will be available in the next few days or in the very near future. Yeah, keep our fingers crossed. But, yes, they were done. You won't have to develop your own forms. So stay tuned for those.

And there's a question that posed. Do you think this will allow the court to order ACS or local Departments of Social Services to approve a specific kinship foster home?

Judge Pirro Bailey: I guess on that question, I don't know if that means order them to certify, or order them to place, in a specific kinship?

Trista: Yeah. It wasn't that specific. So let's see. Actually, I think they're referring to order to certify. Yeah.

Judge Pirro Bailey: I don't think under this law, I mean there's procedures if a relative is seeking to become a foster parent and that's denied to challenge that. But that's not part of this law.

Trista: Okay. So one more question before we finish up. Is hearsay admissible in an article 10 or 10a QRTP hearing because it's not a fact-finding hearing? Are the QRTP reports admissible like a permanency hearing report?

Judge Elloras-Ally: That should be silent. It doesn't specifically define that it's an article 10 fact-finding where hearsay is not allowed, and if you can combine it with the permanency, I think you can allow it in. There might be cross-examination of the maker of the report. But that might be the appellate decision helping us figure that out. But it doesn't specifically indicate that you can't admit it or that hearsay is not allowed. So I think it's more aligned with permanency hearings where hearsay is allowed, but I might be standing alone on that principle. I don't know.

Judge Pirro Bailey: If you have at least one to join you, I think I would take the position that placement is dispositional and therefore, hearsay is admissible. But, again, I think it will, unless there is some change in the law going forward, it will be subject to cases going up on appeal and case law.

Trista: Let's see. One more question. Are you envisioning the Qualified Individual providing in-person testimony or will their report be sufficient?

Judge Pirro Bailey: I think that's going to be case specific. And, in some circumstances, everyone could possibly stipulate to the report even though they may not necessarily agree with the recommendation. There could be circumstances where the caseworker offers it through counsel as a business record received. And then, again, there will be other cases where someone subpoenas the QI and they actually testify. So I think you're going to see all across the board depending on how contested

the issue of, one, placement in a QRTP and, two, placement in that specific QRTP is.

Trista: Great. Thank you, Judge Pirro Bailey. Well, we're almost out of time. So I just want to take this time to say thank you to our presenters for taking the time to prepare and share this information with us. It's a lot of information, a lot of rich information. And we all appreciate it. As I said, the materials will be sent out again. So everyone will receive another copy. And thank all the participants as well for being here with us. And just a reminder that we have another program next week on the state's prevention program, and so, we look forward to being back with you then. Until then, take care and best of luck.