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TRANSMITTAL: 90 INF-23

TO: Commissioners of
 Social Services
 Directors of Preventive
 Services Agencies

DIVISION: Family and
 Children
 Services

DATE: May 11, 1990

SUBJECT: Emergency Shelter as Preventive Services: Cosentino
 et al. v. Perales et al. (Court of Appeals)

SUGGESTED

DISTRIBUTION: Directors of Services
 Child Welfare Staff
 Preventive Services Staff
 Staff Development Coordinators

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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		423.4(b)(4)	409-a		GIS Msg
		423.5(j)			2/12/90
		430.9			

This letter is to provide you with additional information about the January 9, 1990 decision by the New York State Court of Appeals relating to the Cosentino et al. v. Perales et al. lawsuit. You were notified of that decision in a GIS message on February 12, 1990. The result of the decision is that effective January 9, 1990 there is no time limit on the provision of emergency shelter as a preventive service.

The Court of Appeals decision upheld an earlier lower court decision invalidating Department Regulation 18 NYCRR 423.4(b)(4) which set a limit of 90 days on the provision of emergency shelter as a preventive service and enjoining the Department (and local social services districts) from enforcing the regulatory limit. The preliminary injunction had been issued in Supreme Court in New York County in April 1987 but had been stayed by various actions on appeals.

The Cosentino v. Perales lawsuit involved allegations that actions by New York City's Human Resources Administration led to inappropriate placement of children in foster care because of homelessness or inadequate housing and that the City allegedly failed to provide any services, including emergency shelter, to the children and/or family, to prevent foster care. The plaintiffs argued that the regulatory restrictions limiting the provision of emergency shelter as a preventive service to no more than 90 days acted against the provision of emergency shelter at all in such cases and actually encouraged the inappropriate use of foster care. They also argued that the restriction had no factual base, that it conflicted with the purpose of the preventive services law (Section 409-a of the Social Services Law) and that it was arbitrary and capricious.

In April 1987, the Supreme Court in New York County issued a decision holding that "the 90-day rule is unrelated to the needs of the homeless and is at odds with governing law". The court also issued a preliminary injunction enjoining the Department from imposing the 90-day restriction on the provision of emergency shelter as a preventive service. The Department appealed and obtained a stay of the lower court's order pending the result of the appeal.

The appeal to the Appellate Division, First Department was unsuccessful. The Appellate Division in its September 28, 1989 decision unanimously upheld the issuance of the preliminary injunction by the lower court which invalidated the regulation and enjoined the Department from its application or enforcement. The Department then applied to the Court of Appeals for leave to appeal. The Court of Appeals denied that application on the basis that the preliminary injunction did not finally determine the issues of this case. The result of this denial is to make immediately effective, as of January 9,

1990, the preliminary injunction invalidating 18 NYCRR 423.4(b)(4) and enjoining the Department (and local districts) from enforcing the 90-day restriction on the provision of emergency shelter as preventive services.

In consequence to this notification of the court action in this case, local districts are reminded that neither homelessness nor inadequate housing alone is an appropriate reason for the placement of children into foster care. It is the long-standing policy of the Department that a parent's financial or social condition, including homelessness or living in inadequate housing, may be a basis for the provision of services, including preventive services, but it is not an adequate reason for removal of children from their home and/or their placement into foster care.

Districts are reminded that, when emergency shelter is provided as a preventive service, eligibility and documentation standards requirements in 18 NYCRR 423.3 and 18 NYCRR 430.9 apply. In addition, the provisions of 18 NYCRR 423.5(j), which require that local districts explore and use other available funding sources, such as Emergency Assistance to Needy Families with Children (EAF) and Income Maintenance, prior to providing emergency shelter as a preventive service, remain in effect.

Additional policy communications regarding emergency shelter as a preventive service will be following.

Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services