§ 1089-a. Custody or guardianship with a parent or parents, a relative or relatives or a suitable person or persons pursuant to article six of this act or guardianship of a relative or relatives or a suitable person or persons pursuant to article seventeen of the surrogate's court procedure act. (a) Where the permanency plan is placement with a fit and willing relative or a respondent parent, the court may issue an order of custody or guardianship in response to a petition filed by a respondent parent, relative or suitable person seeking custody or guardianship of the child under article six of this act or an order of guardianship of the child under article seventeen of the surrogate's court procedure act. A petition for custody or guardianship may be heard jointly with a permanency hearing held pursuant to this article. An order of custody or guardianship issued in accordance with this subdivision will result in termination of all pending orders issued pursuant to this article or article ten of this act if the following conditions have been met:

(i) the court finds that granting custody to the respondent parent or parents, relative or relatives or suitable person or persons or guardianship of the child to the relative or relatives or suitable person or persons is in the best interests of the child and that the termination of the order placing the child pursuant to article ten of this act will not jeopardize the safety of the child. In determining whether the best interests of the child will be promoted by the granting of guardianship of the child to a relative who has cared for the child as a foster parent, the court shall give due consideration to the permanency goal of the child, the relationship between the child and the relative, and whether the relative and the local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, and, if so, whether a fact-finding hearing pursuant to section one thousand fifty-one of this chapter has occurred, and whether compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options; and

(ii) the court finds that granting custody to the respondent parent or parents, relative or relatives or suitable person or persons or guardianship of the child to the relative or relatives or suitable

person or persons will provide the child with a safe and permanent home; and

(iii) the parents, the attorney for the child, the local department of social services, and the foster parent of the child who has been the foster parent for the child for one year or more consent to the issuance of an order of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act and the termination of the order of placement pursuant to this article or article ten of this act; or, if any of the parties object to the granting of custody or guardianship, the court has made the following findings after a joint hearing on the permanency of the child and the petition under article six of this act or article seventeen of the surrogate's court procedure act:

(A) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and a parent or parents fail to consent to the granting of the petition, the court finds that the relative or relatives or suitable person or persons have demonstrated that extraordinary circumstances exist that support granting an order of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act to the relative or relatives or suitable person or persons and that the granting of the order will serve the child's best interests; or

(B) if a relative or relatives or suitable person or persons have filed a petition for custody or guardianship and the local department of social services, the attorney for the child, or the foster parent of the child who has been the foster parent for the child for one year or more objects to the granting of the petition, the court finds that granting custody or guardianship of the child to the relative or relatives or suitable person or persons is in the best interests of the child; or

(C) if a respondent parent has filed a petition for custody under article six of this act and a party who is not a parent of the child objects to the granting of the petition, the court finds either that the objecting party has failed to establish extraordinary circumstances, or, if the objecting party has established extraordinary circumstances, that granting custody to the petitioning respondent parent would nonetheless be in the child's best interests; or

(D) if a respondent parent has filed a petition for custody under article six of this act and the other parent fails to consent to the granting of the petition, the court finds that granting custody to the petitioning respondent parent is in the child's best interests.

(a-1) Custody and visitation petition of non-respondent parent under article six of this act. Where a proceeding filed by a non-respondent parent pursuant to article six of this act is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the permanency hearing and the hearing on the custody and visitation petition under article six of this act; provided however, the court must determine the non-respondent parent's custody petition filed under article six of this act in accordance with the terms of that article.

(a-2) Custody and visitation petition of non-respondent parent under section two hundred forty of the domestic relations law. Where a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under this article may jointly hear the permanency hearing and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court must determine the non-respondent parent's custodial rights in accordance with the terms of paragraph (a) of subdivision one of section two hundred forty of the domestic relations law.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section, where applicable, including, if the guardian and local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, that a fact-finding hearing pursuant to section one thousand fifty-one of this chapter and a permanency hearing pursuant to section one thousand eighty-nine of this part have occurred, and the compelling reasons that exist for determining that the return home of the child are not in the best interests of the child and are, therefore, not appropriate

permanency options for the child, and shall result in the termination of any orders in effect pursuant to article ten of this act or pursuant to this article. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the respondent or respondents when granting custody or guardianship pursuant to article six of this act under this section or the granting of guardianship under article seventeen of the surrogate's court procedure act in accordance with this section.

(c) As part of the order granting custody or guardianship in accordance with this section pursuant to article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act, the court may require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any subsequent proceeding to modify the order of custody or guardianship granted pursuant to the article six proceeding; provided, however, if the guardian and the local department of social services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, the order must require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any such subsequent proceeding involving custody or guardianship of the child.

(d) Any order entered pursuant to this section shall conclude the court's jurisdiction over the article ten proceeding and the court shall not maintain jurisdiction over the proceeding for further permanency hearings.

(e) The court shall hold age appropriate consultation with the child, however, if the youth has attained fourteen years of age, the court shall ascertain his or her preference for a suitable guardian or custodian. Notwithstanding any other section of law, where the youth is over the age of eighteen, he or she shall consent to the appointment of a suitable guardian or custodian.