§ 1095. Fact finding and disposition. (a) No fact finding hearing may commence under this article unless the court enters a finding that all parties are present at the hearing and have been served with a copy of the petition, provided however, that if any party is or are living but are not present, that the court may proceed if every reasonable effort has been made to effect service under subdivision (d) of section one thousand ninety-three of this article.

(b) The court shall sustain the petition and make a finding that a child is destitute if, based upon a preponderance of competent, material and relevant evidence presented, the court finds that the child meets the definition of a destitute child as described in subdivision (a) of section one thousand ninety-two of this article. If the proof does not conform to the specific allegations of the petition, the court may amend the allegations to conform to the proof if no party objects to such conformation.

(c) If the court finds that the child does not meet such definition of a destitute child or that the aid of the court is not required, the court shall dismiss the petition, and if applicable, return a child who was placed in the temporary care of the commissioner of social services to any parent, caretaker or interested adult; provided, however, that if the court finds that the child may be in need of protection under article ten of this act, the court may request the commissioner of social services to conduct a child protective investigation in accordance with subdivision one of section one thousand thirty-four of this act. The court shall state the grounds for any finding under this subdivision.

(d) If the court sustains the petition pursuant to subdivision (b) of this section, it may immediately convene a dispositional hearing or may adjourn the proceeding for further inquiries to be made prior to disposition provided however, that if a petition pursuant to article six of this act has been filed by a person or persons seeking custody or guardianship of the child, or if a petition pursuant to article seventeen of the surrogate's court procedure act seeking guardianship of the child has been filed, the court shall consolidate the dispositional hearing with a hearing under section one thousand ninety-six of this article, unless consolidation would not be appropriate under the circumstances. If the court does not consolidate such dispositional

proceedings it shall hold the dispositional hearing under this section in abeyance pending the disposition of the petition filed pursuant to article six of this act or article seventeen of the surrogate's court procedure act. Based upon material and relevant evidence presented at the dispositional hearing, the court shall enter an order of disposition stating the grounds for its order and directing one of the following alternatives:

(1) placing the child in the care and custody of the commissioner of social services; or

(2) granting an order of custody or guardianship to relatives or suitable persons pursuant to a petition under article six of this act or guardianship of the child to a relative or suitable person under article seventeen of the surrogate's court procedure act and in accordance with section one thousand ninety-six of this article.

(e) If the child has been placed pursuant to paragraph one of subdivision (d) of this section, the court shall include the following in its order:

(1) a date certain for the permanency hearing in accordance with paragraph two of subdivision (a) of section one thousand eighty-nine of this act;

(2) a description of the plan for the child to visit with his or her parent or parents unless contrary to the child's best interests;

(3) a direction that the child be placed together with or, at minimum, to visit and have regular communication with, his or her siblings, if any, unless contrary to the best interests of the child and/or the siblings and may incorporate an order issued pursuant to part eight of article ten of this chapter in accordance with subdivision (f) of this section;

(4) a direction that the child's parent or parents be notified of any planning conferences to be held pursuant to subdivision three of section four hundred nine-e of the social services law, of their right to attend such conferences and to have counsel or another representative or companion with them;

(5) if the child is or will be fourteen or older by the date of the permanency hearing, the services and assistance that may be necessary to assist the child in learning independent living skills; and

(6) a notice that, if the child remains in foster care for fifteen of

the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(f) If the child has been placed pursuant to paragraph one of subdivision (d) of this section, the provisions of part eight of article ten of this act shall be applicable.

(g) If the court makes an order pursuant to paragraph one of subdivision (d) of this section, the court may include a direction for the commissioner of social services to provide or arrange for services or assistance, limited to those authorized or required to be made available under the comprehensive annual services program plan then in effect, to ameliorate the conditions that formed the basis for the fact-finding under this section and, if the child has been placed in the care and custody of the commissioner of social services, to facilitate the child's permanency plan.