

toolkit

ADVANCING SFA

NORMALCY PROVISIONS

JIM CASEY YOUTH OPPORTUNITIES INITIATIVE

THE ANNIE E. CASEY FOUNDATION

ACKNOWLEDGMENT

This toolkit was produced with the help of the Juvenile Law Center, in particular Jennifer Pokempner, child welfare policy director. We are grateful for the Juvenile Law Center's time, resources and energy dedicated to researching and writing this publication and its companion appendix.

ABOUT THE ANNIE E. CASEY FOUNDATION

The Annie E. Casey Foundation is a private philanthropy that creates a brighter future for the nation's children by developing solutions to strengthen families, build paths to economic opportunity and transform struggling communities into safer and healthier places to live, work and grow. For more information, visit the Foundation's website at www.aecf.org.

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section one

Understanding the Preventing Sex Trafficking and Strengthening Families Act: The Legal Requirements

The Preventing Sex Trafficking and Strengthening Families Act (Strengthening Families Act) became Public Law 113-183 on September 29, 2014.¹ The law seeks to provide youth who are placed in the child welfare system with the same opportunities for extracurricular, enrichment, cultural and social activities as their peers in intact families. The law does this by:

- A. Providing caregivers more decision-making authority over extracurricular, enrichment, cultural and social activities;
- B. Requiring that the child welfare agency promote and support caregivers and youth in accessing these opportunities; and
- C. Involving the court in overseeing access to activities and the promotion of normalcy in general.

Specifically, the law requires the child welfare agency to:

1. **Implement the Reasonable and Prudent Parent Standard Across All Placement Types**

States must institute the “reasonable and prudent parent standard” across the child welfare system. The law defines the reasonable and prudent parent standard as a standard “characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child.”² This standard should be used by a “caregiver” “when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.”³

2. **Train All Caregivers in the Reasonable and Prudent Parent Standard and Tie Training Requirements to the Licensing of Family Foster Care and Child Care Institutions**

States must ensure that all caregivers in family foster care and child care institutions are trained in the reasonable and prudent parent standard and link this training requirement to licensure.⁴

3. **Revise Requirements and Standards for Family Foster Care and Child Care Institutions to Reflect the Application of the Reasonable and Prudent Parent Standard**

To be eligible for Title IV-E funds, states must revise their standards and licensing requirements to reflect the application of the reasonable and prudent parent standard.⁵ These standards must include how liability protections will be provided to caregivers.⁶ The standards must also show that contracts between the child welfare agency and the child care institutions include the requirement of at least one on-site official who is the designated caregiver and the person responsible for exercising the reasonable and prudent parent standard.⁷

4. **Provide Liability Protections for Caregivers When They Properly Exercise the Reasonable and Prudent Parent Standard**

When injuries result from activities where the reasonable and prudent parent standard was exercised appropriately, the law requires that states

have policies related to the liability of caregivers and private entities.⁸

5. Ensure Court Oversight of Normalcy

For youth with a current or proposed permanency plan, or another planned permanent living arrangement (APPLA), the child welfare agency must document for the court or administrative reviewing entity that (1) the youth has received regular and ongoing opportunities to engage in age- or developmentally appropriate activities,⁹ and (2) the youth's caregivers are exercising the reasonable and prudent parent standard.¹⁰

6. Involve Youth in Case and Transition Planning

For youth age 14 and older, the child welfare agency must consult the youth when developing the case plan.¹¹ The youth must be allowed

to involve two individuals in case planning who are not a foster parent or part of the casework staff. One of these individuals may be an advocate on normalcy issues.¹²

7. Notify Youth of Their Rights and Opportunities

Youth age 14 and older must be provided a list of their rights as part of the case planning process. This document must, at least, describe their rights with respect to education, health care, visitation and court participation, including their right to receive the vital documents and records upon discharge listed in the new law. They must also be provided information about how to stay safe and avoid exploitation. This material must be conveyed in youth-friendly language and its receipt must be documented in the youth's case plan.¹³

section two

Implementing the Provisions of the Preventing Sex Trafficking and Strengthening Families Act: 13 Recommendations for Promoting Normalcy

Policy can take many forms, including law, regulation, administrative guidance and contract language. Promoting and supporting normalcy for children and youth involved in the child welfare system involves change in policy and practice at every level. The system must be responsible for promoting and supporting normalcy; the child should have a right or a guarantee to have opportunities to participate and be supported in participation; and caregivers should be empowered to make decisions about these activities, equipped with the training and support to make good decisions, and provided the liability protections and support so that fear does not dominate decision making. Finally, there must be clear systems of accountability that allow enforcement and provide feedback loops to make sure policies are working and provide remedies when the policies are not followed. The reforms envisioned by the Strengthening Families Act require systemic changes at every level, but done well, these changes have the potential to significantly improve the quality of life, well-being and permanency outcomes of youth in the child welfare system. The 13 recommendations

listed below provide a road map for effective implementation that will have systemwide impact. A Policy Examples Section follows each recommendation. Citations to policy and law that exemplify the recommendation are contained in this section and full excerpts of the examples can be found in the Appendix to the toolkit.



Every Youth Has a Right to Access Age- or Developmentally Appropriate Activities

Why is this important?

For implementation of normalcy opportunities to be meaningful, reforms must be systemwide with changes occurring at all levels, and with new responsibilities and roles for agencies, courts, families and youth. Caregivers must have decision-making authority, the system

must have an obligation to promote and support access to activities *and* youth must have opportunities to access activities on par with their peers. This is not an unfettered right to participate in every activity selected by a youth. Rather, the right is modified *by* the reasonable and prudent parent themselves, who is guided by an overarching knowledge that participation in activities is beneficial to child and adolescent development. The right is important because it sets an expectation and standard as well as an enforcement mechanism.¹⁴ This right should apply to all youth who are in the care of the child welfare agency, regardless of the placement type or funding stream for the placement.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that provide youth who are in the placement and care responsibility of the child welfare agency the right to access to age and developmentally appropriate activities. The right should be made clear in legislation implementing the reasonable and prudent parent standard.

What agencies can do: Develop guidance on the nature of the right and how it is limited by the exercise of the reasonable and prudent parent standard. Include this right in the bill of rights that the agency is required to provide youth beginning at age 14.

What courts can do: Provide court oversight and enforcement of a youth's right to access to age- and developmentally appropriate activities.

What caregivers can do: Sign up for trainings on the reasonable and prudent parent standard and read any materials distributed. Educate yourself on the law and the opportunities for activities in the community.

What youth can do: Understand your rights. Explore your interests and talents. Research the opportunities that exist in school and the community. Participate in your case planning meetings and court or administrative reviews, talk about your interests and make requests to participate in activities you are interested in. Select individuals who can participate in your case planning meeting and advocate on your behalf on normalcy issues.

Policy Examples

1. California Law, Ca. Welf. & Inst. Code Sec. 362.05(a)(1)
2. Nebraska Revised Statute 43-4704

3. Nebraska Revised Statute 43-4706 (1)

4. Pennsylvania Law, Act 75 of 2015, section 4 (a)

2

Child Welfare Agencies Set a New Expectation That Every Child and Youth Will Have Access to and Participate in Age-Appropriate Activities

Why is this important?

Simply giving caregivers the power to give or deny permission for youth to participate in activities in itself will not result in participation if the child welfare agency is not creating the knowledge, infrastructure and support to make opportunities for participation possible. While many caregivers already seek out opportunities for youth in their care, this may be a new task for others. The child welfare agency should set the expectation that youth should be given the opportunity to participate in age- and developmentally appropriate activities. They should also provide general guidance on the array of activities available and introduce caregivers and youth to opportunities in the community.

The agency, and caseworkers, should search for such activities in the same way it would seek out other services, like treatment or tutoring, in the case planning process. This includes addressing transportation and other activity costs, such as costs for equipment, uniforms and fees. See Recommendation 8 for information about addressing costs.

The child welfare agency should consider imposing additional requirements for group care providers to address the challenges inherent in implementing the provisions in these types of settings. See Recommendation 9 for more information.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that obligate the child welfare agency to promote access to age- and developmentally appropriate activities. Allocate sufficient funds to facilitate access.

What agencies can do: Develop guidance on how access can be promoted, including addressing how funds can be provided, as needed, to facilitate access. Develop resource guides on community activities and opportunities. Develop relationships with community organizations, schools and foundations to facilitate low- or no-cost access.

What courts can do: Provide court oversight of a youth's access to age- and developmentally appropriate activities and make orders to reduce barriers to access.

What caregivers can do: Seek information about activities and resources in your community and in school. Seek information about scholarships and funds that will facilitate access.

What youth can do: Understand your rights. Explore your interests and talents. Research the opportunities that exist in school and the community. Participate in your case planning meetings and court or administrative reviews, talk about your interests and make requests to participate in activities you are interested in. Select individuals who can participate in your case planning meeting and advocate on your behalf on normalcy issues.

Policy Examples

1. Florida Law, Fl. Stat. Ann. § 34.4091 (3)(c)
2. California Law, Ca. Welf. & Inst. Code Sec. 362.05
3. Tennessee Policy Guidance, Section 2. Encouraging Access to Age-Appropriate Activities and Promoting “Normalcy,” Tennessee Department of Children’s Services Protocol for Reasonable and Prudent Parenting, Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes (Effective Date, April 2016), available at <https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudentParenting.pdf>

The reasonable and prudent parent standard applies to all youth who are the placement and care responsibility of the child welfare agency. For states with extended foster care, this will include young adults who are age 18 or older. Systemwide, the standard should be implemented in an age-appropriate way. For young people who are legal adults, this means that the “caregiver” will act in a supportive, advising role for many decisions and the young adult will be the prime decision maker. Child welfare agencies should provide caregivers with guidance on how to navigate this changing relationship in a way that recognizes the rights of the young adult as well as the young person’s need for guidance, support and opportunities to learn from mistakes.

3

The State’s Definition of the Reasonable and Prudent Parent Standard Clearly Defines and Conveys Its Scope

Why is this important?

Implementing the reasonable and prudent parent standard represents a significant shift in practice and the location of decision making. For many caregivers and child welfare agency personnel, this shift will be natural and welcome, and will simply allow caregivers to more firmly integrate a youth into the structure of the family. For others, even those who welcome it, there will be some fear and possibly disbelief that they are empowered to make decisions that they usually relied on the court or agency to make.

For these reasons, providing as much guidance and illustration as possible will aid in successful implementation. Defining the standard involves explaining what it is and explaining the factors that a caregiver should

consider to guide decision making. Defining the scope of the standard is also important. Scope should be considered in at least two ways: 1) the scope of the application of the standard to the full array of placement types of all children who are in the placement and care responsibility of the child welfare agency, and 2) the scope of coverage of the standard to types of decisions that are made about a child’s activities and life.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that:

1. Define the proper scope of the reasonable and prudent parent standard to all placement types for children who are in the placement and care responsibility of the child welfare agency;
2. Acknowledge the importance of parental involvement in decision making and that their rights as parents are not impacted by the standard;
3. Define the categories of activities that the standard applies to; and

4. List factors that caregivers should consider in decision making, including:

- a. the child's wishes,
- b. age, maturity and developmental level,
- c. potential risk factors and plans or steps to reduce risk,
- d. the importance of encouraging developmental and emotional growth,
- e. the importance of developing skills that will help with the transition to adulthood,
- f. the importance of providing the least restrictive and most family-like living setting and environment,
- g. special considerations to reduce barriers to participation that may exist for special populations, such as youth with disabilities, LGBTQ and pregnant or parenting youth, and
- h. clarify that a caregiver's decision cannot conflict with a court order or the provisions of an approved service plan.

What agencies can do: Develop detailed guidance on the standard, including:

1. Detailed examples of the types of activities covered by the standard;
2. Expectations on recurring categories of activities or situations, including:

- travel,
 - situations where background checks are — and are not — required,
 - activities that involve potentially dangerous objects, such as weapons or motorized objects,
 - access to technology, electronics and social media,
 - grooming and style choices that may have cultural, ethnic or religious significance, and
 - grooming and style choices that may reflect a youth's individual identity;
3. Decisions that are not covered by the standard because they remain with the biological parents;

4. Decisions that may not be covered by the standard because they reflect a right the youth has, such as certain health care decisions, decisions about identity and expression and some decisions about religious expression;

5. How the standard will be applied to young adults who are between ages 18 and 21 who are in extended foster care;

6. How accommodations and other supports can be provided to youth with disabilities or special needs so that they have equal opportunity for access;

7. How the voice of parents will be considered in decisions and planning about normalcy;

The reasonable and prudent parent standard of the Strengthening Families Act does not cover all caregiving and parenting decisions. Caregivers are asked to use the "reasonable and prudent parent standard" when making decisions about whether a youth can participate in extracurricular, enrichment, cultural and social activities. Biological parents retain many rights — such as those around medical treatment, education and religion — that are not impacted by this new standard.

Individuals with disabilities, including children, have the protection of the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq., and Rehabilitation Act, 29 U.S.C.A. § 701 et seq., to ensure that they are not discriminated on the basis of disability and that they are provided reasonable accommodations so that they can access services and experiences in the community. Implementation of normalcy policies should take advantage of these strong legal requirements as they can promote access to age- or developmentally appropriate activities for youth with disabilities who may need assistance, aid or modifications to achieve full access safely. Normalcy policies should take into consideration the disabilities laws and enlist the entities existing in each state — Protection and Advocacy Agencies — to arrange accommodations. For a list of Protection and Advocacy Agencies, see <http://www.ndrn.org/en/ndrn-member-agencies.html>.

8. Activities that are not covered by the standard because they are regulated by state law, such as driving, getting a piercing or a tattoo.

What courts can do: Provide court oversight of a youth’s access to age- and developmentally appropriate activities and make orders to reduce barriers to access. Model collaborative decision making. Encourage broad access to activities.

What caregivers can do: Participate in training on the reasonable and prudent parent standard. Ask for information and assistance when lacking information about opportunities or barriers to access to activities. Embrace biological parent involvement when possible.

What youth can do: Understand your rights. Explore your interests and talents. Research the opportunities that exist in school and the community. Participate in your case planning meetings and talk about your interests. Select individuals who can participate in your case planning meeting and advocate on your behalf on normalcy issues.

Policy Examples

1. California Law, Ca. Welf. & Inst. Code Sec. 362.05(a)(1) (clarifying that the standard applies to all children who are placed through the child welfare system regardless of placement type)

Good casework may dictate involving biological parents in decision making that the caregiver has legal authority to make based on the reasonable and prudent parent standard. The standard is meant to promote access to opportunities for youth. This can and should be consistent with other case planning goals such as permanency, including reunification. Including parents in decisions on normalcy issues — as with other parenting issues — promotes good relationships and supports development of parenting skills.

Many activities, like driving, are milestones of adolescence and young adulthood to which youth in foster care face great barriers that are not impacted by the reasonable and prudent parent standard. To promote normalcy in the whole child welfare system, states will need to address the legal and policy barriers to youth accessing licenses. The reasonable and prudent parent standard addresses some barriers to normalcy, but not all. States are encouraged to take the opportunity of Strengthening Families Act implementation to address as many barriers to normalcy as possible. The Florida Keys to Independence Act and the model of service delivery and advocacy supported by that law provides a great model. For more information, see www.keystoindependence.org.

2. Pennsylvania Law, Act 75 of 2015, Sec 4(c) (enumerating considerations in exercising the standard)
3. Tennessee Policy Guidance, Encouraging Access to Age-Appropriate Activities and Promoting “Normalcy,” Tennessee Department of Children’s Services Protocol for Reasonable and Prudent Parenting, Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes (Effective Date, April 2016), available at <https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudentParenting.pdf> (providing detail on how to exercise the standard and how to understand the scope of the standard)

4

Case Planning Meetings Should Include Discussions of Participation in Age- and Developmentally Appropriate Activities and Case Plans Should Document Goals and Progress in This Area

Why is this important?

One of the key ways to integrate normalcy into the fabric of the child welfare system is to include it in the central planning document: the case plan. Requiring that goals around normalcy, and the services

and supports needed to achieve those goals, are included in the case plan puts them on par with case planning objectives related to safety, well-being and permanency. Including these goals in the case plan also facilitates tracking of progress and accountability.

In addition, building discussions of normalcy into case planning will help the agency fulfill its obligation to promote access to activities. By making the discussion a regular part of planning, the case planning team, including the youth, will take more time to talk about interests and activities, seek them out, and identify and troubleshoot any barriers to participation. Building this into case planning, where parents and family are routinely involved, can also promote collaboration, bolster positive parenting skills and help the team address any difference of opinion.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that require that the case plan a) include normalcy goals; b) identify the services to support access to age- and developmentally appropriate activities; and c) include documentation that the youth was consulted in development of the plan, discussion of normalcy activities and, beginning at least at age 14, provided the opportunity to identify individuals to be part of the planning team (who are not the foster parent or

caseworker of the child) who can provide advice and advocacy on normalcy issues.

What agencies can do: Develop guidance on how to include the normalcy discussions in case planning and in engaging youth. Modify the case plan so that the goals and the action steps to support the goals can be documented, and so

that information about if and how the youth's biological parents can be involved in the discussion is included. Develop the capacity to collect this information from the case plan so implementation can be tracked on the aggregate level.

What courts can do: Provide court oversight of a youth's access to age- and developmentally appropriate

For most caseworkers, the monthly visit with a youth is when important conversations occur that lead to development of case planning goals and an action plan to achieve them. Building discussions about access and opportunities for age-appropriate activities into monthly visits will enhance the quality of case planning and more comprehensively build normalcy into the fabric of child welfare practice. For a tool to guide visitation, see the Kansas Youth Advisory Council's Visitation Tool.

SUGGESTED STATUTORY LANGUAGE TO INCORPORATE NORMALCY INTO THE CASE PLAN

- (A) Contents of a child's permanency/case plan. The child's permanency/case plan shall document that the child has had an ongoing opportunity to engage in age-appropriate or developmentally appropriate activities by providing the following in the permanency/case plan:
- 1) A description of the extracurricular, enrichment, cultural and social activities in which the child is participating or plans to participate in the next six months;
 - 2) A description of any services or supports, such as funds, transportation or accommodations, to facilitate participation and the person or entity responsible for providing the identified supports;
 - 3) Verification that the child was engaged in an age- or developmentally appropriate way in a discussion about opportunities to participate in extracurricular, enrichment, cultural and social activities;
 - 4) A description of if and how the biological parents were involved in discussions about participation in age- or developmentally appropriate activities and any concerns that they raised about participation; and
 - 5) Verification that the child was given the opportunity to identify individuals to participate in case planning and provide advocacy on normalcy issues.

activities and make orders to reduce barriers to access. Model collaborative decision making. Encourage broad access to activities.

What caregivers can do: Participate in case planning meetings. Seek information about activities and opportunities in school and the community. Help identify any barriers to access and ask that supports to address the barriers be included in the case plan.

What youth can do: Understand your rights. Explore your interests and talents. Research the opportunities that exist in school and the community. Participate in your case planning meetings and court and make sure the activities in which you want to participate are documented in the plan with any services or supports you need to make participation possible. Identify individuals who can participate in your case planning meetings and provide advocacy and support.

Policy Examples

1. Florida Law, Fl. Statutes 409.1451 (a)(3)
2. Pennsylvania Law, Act 75 of 2015 Section 6 (5)
3. Washington State Law, RCW 74.13.710 (5)

5

Courts and Administrative Reviewing Entities Are Well Informed of the Importance of Normalcy and Incorporate Oversight of Access to Age- and Developmentally Appropriate Activities Into All Status and Permanency Reviews

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Why is this important?

The court always plays an important role in implementation of child welfare laws since the questions that the court asks and the findings that it is required to make drive practice. The court's enforcement power also provides accountability. Under federal law, six-month status reviews and yearly permanency hearings must be conducted by the juvenile court, or by an administrative body appointed by the court, and must be consistent with federal law requirements.¹⁵

The court ensures normalcy provisions are enforced by providing oversight and setting expectations. The court can do this by:

- Communicating the importance of normalcy to a child's well-being and sense of permanency;

- Setting the expectation that youth should be supported in access to age- and developmentally appropriate activities to the greatest extent possible;
- Ensuring that the reasonable and prudent parent standard is being exercised;
- Finding regular and ongoing opportunities for youth to engage in age- or developmentally appropriate activities;
- Issuing orders to eliminate barriers to youth participation in activities, such as
 - providing transportation, obtaining funding to make participation possible or directing planning meetings to discuss participation,
 - ensuring agency policies and practices are not at odds with new federal and state policy on normalcy, and
 - modeling collaborative decision making that facilitates youth involvement in age-appropriate activities and respects the roles of all parties, including the biological parents.

The new federal law frees the court from being enmeshed in decisions about day-to-day social and recreational activities unless there is a conflict. Parties should no longer need to ask for hearings to get court approval to attend a camp or to

take a school picture. Instead, the court can focus its time on areas of conflict regarding normalcy, and on permanency and well-being issues in general.

The court's pivotal role in setting the tone and expectation for child welfare practice provides support for making the normalcy inquiry in the review process apply to all youth regardless of permanency plan, not just youth with the permanency plan of APPLA. If the court's inquiry and findings will help ensure that prioritization of normalcy takes deep root in the child welfare system, all youth should feel the benefits of this change.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that require that the court make findings about the exercise of the reasonable and prudent parent standard and that youth have regular and ongoing opportunities to participate in age- and developmentally appropriate activities. The law should also state that the court should make orders to address any barriers to participation faced by the youth or agency. Require that these findings are made for all youth regardless of permanency plan.

What agencies can do: Develop guidance so that caseworkers understand the expectations of the court. Policies should connect the inclusion of

normalcy goals in the case plan to court oversight.

What courts can do: Be prepared to make findings about the exercise of the reasonable and prudent parent standard and ensure that youth have regular and ongoing opportunities to participate in age- and developmentally appropriate activities. Be prepared to engage youth in a conversation about their interests and participation in activities. Be prepared to make orders for planning or services to facilitate access to activities when barriers are identified. Pay special attention to situations where youth may confront barriers to access, such as youth with disabilities, pregnant and parenting youth and LGBTQ youth.

What caregivers can do: Inform the court of any barriers to participation that a youth in your care is experiencing. Ask for any assistance in terms of resources, information or opportunities that you need to support a youth's access to normalcy.

What youth can do: Understand your rights. Explore your interests and talents. Research the opportunities that exist in school and the community. Participate in your case planning meetings and court and make sure the activities in which you want to participate are documented in the plan with any services or supports you need to make participation possible. Identify individuals who

can participate in your case planning meetings and provide advocacy and support.

Policy Example

- Pennsylvania Law, 42 Pa. C.S.A. § 6351 (f)(12)

6

Enact a Youth-Friendly and Responsive Grievance Policy

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Why is this important?

To embed normalcy into the everyday child welfare practice and planning demands effective feedback loops and enforcement mechanisms. While court and administrative reviews are central forums for enforcement and complaints, they are mandated to occur only once every six months. Even for jurisdictions that review cases more frequently, both the formality and structure of the forum and its frequency are not always amenable to addressing day-to-day concerns of youth. Ideally, grievance procedures create accessible opportunities to air complaints and concerns and can provide timely responses. Done well,

effective grievance policies encourage problem solving and improvement in practice and service delivery. In addition, the Social Security Act bolsters the importance of this process by requiring that fair hearings be provided to individuals when they are denied a “benefit” under Title IV-E.¹⁶ Since the normalcy provisions are being integrated into the Title IV-E structure of benefits and services, mechanisms should be developed or enhanced so that complaints around normalcy can be lodged and resolved.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that establish a grievance policy in law and regulation that contains the following components:

- a. Notification to youth, professionals, and community stakeholders of the availability of a grievance process at regular intervals in a case and age-appropriate manner.
- b. Standards of confidentiality must be followed.
- c. Youth must be informed that they have right to file a grievance and can file without fear of retaliation.
- d. Filing a grievance must be easy to do with few requirements and accessible through multiple access points.

It is important for youth and young adults to understand that they, too, have rights. It is especially important for youth in care to understand that they have rights and responsibilities since they often feel disempowered and that all decisions are made for them. It is recommended, however, that the Bill of Rights focuses on the rights that youth have and does not also list out responsibilities and expectations. Youth have certain rights regardless of their behavior and where they are in goal planning. A Bill of Rights that merges rights and expectations of youth risks sending the message that rights can be taken away if a youth behaves poorly or is still working on goals.

- e. Assistance to file a grievance must be easily available.
- f. The schedule for response and resolution of grievances must be clear and responsive to a youth’s sense of time.
- g. The process should encourage a problem-solving approach.
- h. There are mechanisms for appeal and access to higher, independent levels of review.
- i. Quality assurance and accountability are ensured through data collection and monitoring of grievances and resolutions through at least annual reports to the legislature.
- j. The process — and quality assurance system — has been developed in consultation with youth.

What agencies can do: Develop guidance on the grievance procedure. Develop youth-friendly notification, forms and related materials. Train staff to assist youth with filing grievances. Designate individuals to provide assistance in filing grievances. Take advantage of the agency’s technological capacity to develop youth-friendly mechanisms for

filing grievances, such as hotlines and smartphone and computer applications.

What courts can do: Ensure that youth understand the right to file a grievance. Make sure youth understand that court is also a good forum to address areas of concern and complaints.

What caregivers can do: Understand the grievance policy. Share and explain the policy with youth. Assist youth in filing grievances or finding assistance if needed.

What youth can do: Understand the grievance policy. Assist the child welfare agency in developing policies and notifying youth.

Policy Examples

1. New Mexico Administrative Code, 8.26.2.13 NMAC (F)
2. Suggested Model Policy for Developing a Grievance Procedure, See Appendix, p. 11.

7

Bill of Rights Are Enacted That Include the Right to Have Opportunities to Access Age- and Developmentally Appropriate Activities, Have the Force of Law, and Include the Right to File a Grievance

Why is this important?

As discussed above, rights are important because they express a guarantee that is legally enforceable. Youth, especially youth in care, are used to having decisions made for them and not being informed of the rules of the system. Most states have laws and regulations that provide youth rights by virtue of their status as children who are the care and placement responsibility of the state. State intervention requires this. The federal child welfare law provides additional legal guarantees to children in care. The rights our laws have provided children and individuals reflect our deepest and most important values about dignity, respect, privacy and due process. These are important principles that we want youth to know about and understand as they enter adulthood and learn to speak and advocate for themselves.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that list all of the rights that youth have under state and federal law by virtue of being a youth in foster care, and include the opportunity to participate in age- and developmentally appropriate activities and filing grievances as among those rights. Laws should require regular notification and explanation of these rights in a youth-friendly manner. As with the grievance policy discussed earlier, laws should include a requirement that public reports are issued annually to at least detail numbers of grievances filed about rights violations, the type of grievances and the resolutions reached.

What agencies can do: Disseminate the Bill of Rights widely and amend the case plan to include documentation of youth notification and receipt.

What courts can do: Distribute the Bill of Rights at court hearings, ask youth if they have any questions about their rights and/or any concerns and order any remedial action.

What caregivers can do: Review the Bill of Rights with youth and answer any questions they may have. Help them file a grievance and raise issues of concern in court.

What youth can do: Help develop a Bill of Rights that is understandable to youth. Ask for self-advocacy training.

Policy Example

1. California Law, Ca. Welf. & Inst. Code Sec. 16001.9.

8

Caseworkers and Supervisors Are Trained on the Reasonable and Prudent Parent Standard and All Normalcy Aspects of the Strengthening Families Act

Why is this important?

To have systemwide impact, all parties at all levels in the child welfare system need to understand the reasonable and prudent parent standard and all aspects of the child welfare agency's obligation to provide normalcy. Training caregivers alone will not have the desired effect, not only because their knowledge and exercise of the standard must be supported by those with adequate knowledge, but also because exercising the standard is not the only aspect of promoting normalcy. Investment in high-quality, interactive training and accessible statements of policy directed at all levels of the child welfare agency and its partners will greatly assist with systemwide implementation and common understanding.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that require training of caregivers, child welfare agency personnel, their contractors and any other individuals who are crucial to implementation of the normalcy provisions. Enact laws and regulations that tie training to licensure as required by federal law.

What agencies can do: Develop and offer training on normalcy and the reasonable and prudent parent standard that will address the needs of caregivers and support persons in all placement settings, including congregate care.

What courts can do: Attend the training. Ask whether caregivers and stakeholders in your courtroom have been trained.

What caregivers can do: Attend the training. Ask questions and provide feedback on what would be most helpful to teach and support caregivers.

What youth can do: Ask your caregiver and caseworker if they have been trained. Offer to be present or be part of the trainings offered.

Policy Example

- 1. Pennsylvania Law, Act 75 of 2015, Sec 5 (1).

9

Develop a Policy and Process to Estimate and Address Potential Additional Costs of Implementing the Normalcy Provisions to Ensure Access to Age- and Developmentally Appropriate Activities

Why is this important?

At the top of most policymakers' lists of barriers to effective implementation of the normalcy provisions is a concern about cost. If that concern is not addressed directly, honestly and creatively, implementation will be challenging. Costs may exist for participation in activities, supplies or uniforms, transportation to activities or even in the form of added supervision to make an activity safe or possible. Even before the Strengthening Families Act, child welfare agencies figured out ways to cover these costs, by building the cost of recreation and activities into a cost of care per diem and creating mechanisms for requesting funds to cover these costs. Some child welfare agencies have specifically used their Chafee Independent Living¹⁷ funds to cover costs of activities for Chafee-eligible older youth. Agencies

have also developed relationships with community organizations and schools to access fee waivers, memberships and other cost-saving measures. Whether or not agencies have developed various mechanisms to cover these costs, they will now have to take them to scale; make them clear to agency staff, caregivers and youth; and develop new strategies to increase their capacity. This will include reviewing per diems, examining the capacity and procedures to access existing funds and looking more closely at the use of Chafee funds. Investing the time developing partnerships will yield long-term rewards. Partnerships with community agencies (such as the YMCA and PAL), schools and foundations that could waive fees or provide funds to provide more opportunities for youth should be considered.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that allocate additional funds to cover new costs. Order a report or convene a work group to research the cost of implementation and to make recommendations to the legislature about ways to cover the cost.

What agencies can do: Convene a committee to study this issue, determine potential additional costs, identify existing processes in place and engage community organizations, stakeholders and funders.

What courts can do: Order that costs be covered by the agency or that plans be developed to address barriers to participation that involve cost.

What caregivers can do: Make yourself aware of any policies for requesting funds for the cost of activities. Search for opportunities in the community for free or low-cost activities. Seek out any scholarships or special funds that can be used for costs.

What youth can do: Identify any activities in which you are interested in participating and let your case planning team know so plans can be made to cover any additional costs. Ask about any fee waivers or scholarships that may be available.

Policy Examples

1. Tennessee, Administrative Policy.
2. California Proposed Legislation, AB 1984 of 2016, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1984

Nakita lives at Group Home A. After talking to her caseworker about her interests and skills, she asked if she could play basketball after school since the group home has a hoop and court. After talking with the designated caregiver for the facility, it was decided that this would be a good activity for Nakita to participate in since she enjoys playing sports, has found basketball a healthy way to reduce stress and it has helped her improve her social skills. When Nakita's caseworker met with the staff to determine when Nakita could play basketball, they were told that Nakita could not play basketball because she would need to be supervised to go out on the court and that they did not have sufficient staff during the after-school hours.

To comply with the Strengthening Families Act, Group Home A will need to change how they staff and supervise youth or it will need to provide alternative activities in the community for Nakita. If, in exercising the reasonable and prudent parent standard, caregivers are saying "yes" to requests to participate in activities, but are finding that the structure or staffing of the group facility get in the way of youth participation, then those policies and practices must be reviewed and revised. The child welfare agency should support group care providers so they can implement the law and help them make the alterations necessary to make this possible.

10

Ensure That the Reasonable and Prudent Parent Standard Is Applied in All Group Care Settings and That They Have Policies and Supports in Place to Fully Implement the Normalcy Provisions and Proactively Address Barriers

Why is this important?

Group homes and institutional care are among the most "abnormal" settings in which a youth can grow up. Child welfare experts have noted this and most states are in the process of reducing their congregate care population. As states engage in these reduction efforts, the normalcy

provisions must still be implemented, and youth who remain in group care must have access to age- and developmentally appropriate opportunities. To acknowledge the barriers to normalcy inherent in group care, explicit implementation efforts should be pursued and barriers to implementation identified and addressed. Facilities need to be proactive and make opportunities for activities accessible.

In addition, effective and optimal implementation of the normalcy provision includes application of the standard to all youth who are the placement and care responsibility of the child welfare agency regardless of their placement type and how it is funded.¹⁸ State law and policy should make this broad application clear to avoid treating youth differently according to placement type. Such unequal application is at odds with the principle of normalcy, which seeks to promote the

treatment of youth in care just as their peers out of care.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that establish specific requirements for group care providers that will proactively address unique implementation barriers posed by the structure of non-family based settings. These laws should require that as a condition of each contract with the child welfare agency, the child care institution must:

- a. Ensure the presence on-site of at least one official who is designated to be the caregiver and is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age- or developmentally appropriate activities.
- b. Ensure that the designated caregiver is trained in how to use and apply the reasonable and prudent parent standard.
- c. Establish qualifications for individuals who can be designated as a caregiver.
- d. Submit a plan for notifying youth about the process for requesting permission to participate in activities.
- e. Submit a plan for how they will expose youth in their care to opportunities for extracurricular, enrichment, cultural and social activities in the community.

What agencies can do: Develop trainings for group care facilities. Convene experts and stakeholders to develop special requirements for child care institutions and to review the plans submitted. Provide technical assistance so that model policies and practices can be developed. Assist facilities in understanding the resources and activities available in the community and how youth can access them. Support facilities in identifying barriers to normalcy, such as staffing, physical structure and facility policies, and assist them in developing new practices.

What courts can do: Ensure that youth in child care institutions have access to age-appropriate activities. Identify barriers to participation and push the case planning team to develop strategies to address the barriers. Order remedial action when necessary.

What caregivers can do: Educate yourself on the standard. Attend required trainings. Work with the facility to develop an implementation plan. Seek out opportunities in the community and the schools and help identify changes in policy and practice that must be made to ensure access to activities.

What youth can do: Learn the process for requesting permission to participate in activities. Seek out opportunities in the community and ask to have access to them. Talk to your lawyer, Guardian ad Litem (GAL), court appointed special advocate (CASA) or caseworker if you

confront barriers to participating in activities. File a grievance if you are facing barriers to participation in activities. Raise the issue in court if you are having difficulty participating in activities.

Policy Examples

- 1. Suggested Model Policy for Implementing Normalcy in Group Care, See Appendix, p. 16.
- 2. Nebraska Revised Statute 43-4706 (4) (Requiring notification to youth in group care)



Develop Liability Protections in Law So That Caregivers and Agencies Are Appropriately Protected When Injuries Result When the Reasonable and Prudent Parent Standard Was Exercised Properly

Why is this important?

Fear of liability by caregivers and agencies has been cited as one of the greatest barriers to allowing youth to participate in age-appropriate activities. Even if this fear was not grounded in the law, it led to either

saying “no” to youth, or putting so much red tape and layers of approval in the way that opportunities were lost or youth and caregivers did not even bother asking. Ensuring that clear liability protections are in law, and that caregivers and agency staff understand them, should free caregivers to make good decisions based on their knowledge of the youth and child development and their desire to provide the youth enriching opportunities. It also frees up agencies to focus on supporting and training caregivers. While the child welfare agency can promulgate regulations that protect a caregiver from any repercussions related to licensure, legislation is needed to protect an individual or entity from liability in a civil suit.

Key Steps to Ensure Success

What law makers can do: Enact law to codify the liability protection of caregivers and related entities. Enact law that provides and allocates funds to purchase insurance coverage for caregivers, or to research and evaluate whether such action should be taken to effectively assure protection.

What agencies can do: Issue guidance and notify caregivers on liability protections. Explain to caregivers and child welfare personnel how liability protections impact decision making. Provide high-quality training and support to caregivers so they are well equipped to make good decisions.

What courts can do: Make caregivers and stakeholders aware of the policy.

What caregivers can do: Understand the policy and ask questions about anything that is not clear.

What youth can do: Understand the policy and ask questions about anything that is not clear.

Policy Example

1. Nebraska Law, Nebraska Revised Statute 43-4708.



Provide a Report or Complete a Survey of Youth and Stakeholders to Determine the Status of Implementation at Least Annually and Make the Results Publicly Available

Why is this important?

One of the best ways to ensure effective implementation is to provide as many feedback loops as possible to gauge progress. These feedback loops help identify areas of challenge and strength and identify issues that arise that are difficult to anticipate. This information provides concrete data that can be used to develop action

plans to improve and fine-tune implementation. Requiring status reports or surveys of a diverse array of stakeholders, including youth, will make sure implementation is informed by data and on-the-ground experiences. Making the report or survey publicly available will ensure that there is a response and accountability.

Key Steps to Ensure Success

What lawmakers can do: Enact laws that require annual surveying and/or a report to the legislature on the progress of implementation. Include specifics on the contents of the report, the requirement to include stakeholders in the development of the report and the timeline for the report’s production and its public availability.

What agencies can do: Design and disseminate surveys. Build surveying on normalcy into existing processes that engage youth and stakeholders. Convene stakeholders to get diverse feedback. Consider whether pulling information from case plans can assist in gauging implementation.

What courts can do: Get involved in surveying youth and stakeholders. Consider whether surveying can occur in court or court waiting rooms. Consider whether information from the court hearings about access to activities can be aggregated to determine trends in implementation.

What caregivers can do: Get involved in any surveying opportunities or stakeholder groups. Assist and encourage youth in taking any surveys or participating in any focus/stakeholder groups.

What youth can do: Ask to participate in any focus groups on implementation. Assist in developing youth surveys. Complete surveys that are provided to you.

Policy Example

1. Nebraska Law, Nebraska Revised Statute § 43-4218.

13

Develop Policies That Ensure That Youth Are Provided a Meaningful Opportunity to Be Engaged in Case Planning

Why is this important?

Active and meaningful youth engagement in case planning is central to achieving good outcomes. When youth are engaged in planning, they are more invested in the results, and the information used to plan, including setting goals and addressing challenges, is more

accurate. The SFA steps up the focus on youth participation in planning, especially around normalcy. This must be reinforced in law and regulation about planning and in court oversight.

Key Steps to Ensure Success

What lawmakers can do: Enact laws and regulation that require youth to be invited to and supported in meaningfully participating in case planning and that their participation is documented in the case plan. Documentation should also be included in the case plan that

shows at least beginning at age 14, the child was given the opportunity to identify individuals to participate in case planning and provide advocacy on normalcy issues. Lawmakers should also review whether sufficient funding has been allocated to support youth advisory and advocacy committees in the states and the capacity of these entities to support advocacy training for youth.

What agencies can do: Establish guidance so that youth and the case planning team understand the requirement, the provided strategies, the supports for engaging youth and how to create a youth-friendly

SUGGESTED STATUTORY LANGUAGE TO REQUIRE THE DEVELOPMENT OF AN ANNUAL NORMALCY IMPLEMENTATION REPORT

(A) Report development. The child welfare agency shall submit a report to the legislature on an annual basis after the enactment of this law that provides information on the status of implementation of this law.

(B) Contents of report. This report shall at least include the following:

1. Feedback from surveys or focus groups of youth who are in an array of child welfare placement settings about their participation in age- or developmentally appropriate activities and any barriers they face to participation.
2. Feedback from surveys or focus groups of caregivers about the exercise of the reasonable and prudent parent standard and their ability to support youth access to age- or developmentally appropriate activities.
3. Feedback from child welfare workers and child welfare community stakeholders from focus groups or surveys about the degree to which youth are accessing age- and developmentally appropriate activities and any identified barriers.
4. Recommendations and action steps based on the findings of the report.

(C) Inclusion of stakeholders in report development. The report must be developed in collaboration with the following stakeholders: the juvenile court, attorneys for dependent children and parents, foster families, child welfare service providers, county child welfare agencies, the state Youth Advisory Board and other agencies identified by the state child welfare agency.

environment for participation. Strategies should include providing advocacy training for youth; providing any individual support for preparation and debriefing; and scheduling meetings in a variety of settings at times that are convenient for the youth. Agencies should also consider developing peer advocacy programs around case planning, since these programs have been found to be effective in developing the skills of peers and in generally enhancing youth voice.

What courts can do: Ask youth whether the youth participate in case planning. Help the team identify and address barriers to participation. Issue an order to address barriers if the team cannot resolve them.

What caregivers can do: Make sure youth receive notification of case planning meetings. Help them prepare for meetings. Help youth make arrangements so that they can attend meetings. Help youth identify any individuals who are important to them that could participate in

case planning and may support the youth in maximizing his or her participation.

What youth can do: Make sure you know when your case planning meetings are scheduled and ask for them to be rescheduled if you cannot attend. Ask for the last case plan if you do not have it so that you can review it before the meeting. Ask for any help you want to prepare for the meeting. Consider bringing some notes with you if it will help you remember important points you want to address. Ask questions if you have them.

Policy Example

1. Nebraska Law, Nebraska Revised Statute § 43-1311.03 (4).

Endnotes

- 1 The full text of the law can be found at <https://www.congress.gov/113/plaws/publ183/PLAW-113publ183.pdf>.
- 2 42 U.S.C.A. §675(10)(A) (West 2015).
- 3 42 U.S.C.A. §675(10)(A).
- 4 42 U.S.C.A. § 671(a)(24) (West 2015).
- 5 42 U.S.C.A. § 671(a)(10)(A) (West 2015).
- 6 42 U.S.C.A. § 671(a)(10)(C) (West 2015).
- 7 42 U.S.C.A. § 671(a)(10)(B) (West 2015).
- 8 42 U.S.C.A. § 671(a)(10)(C) (West 2015).
- 9 42 U.S.C.A. § 675a(a)(3)(B) (West 2015).
- 10 42 U.S.C.A. § 675a(a)(3)(A) (West 2015).
- 11 42 U.S.C.A. § 675(5)(C)(iv) (West 2015).
- 12 42 U.S.C.A. § 675(5)(C)(iv) (West 2015). This provision also requires that the child welfare agency develop a policy to challenge the identification of any of these individuals if the agency believes they are not acting in the child's best interest.
- 13 42 U.S.C.A. § 675a(b)(1)-(2) (West 2015).
- 14 The reasonable and prudent parent standard encourages

caregivers to make decisions as a parent would for his or her own biological child. It remains the case, however, that caregivers do not have all the legal and decision-making rights of a parent and that the child welfare agency can impose a standard of care, which includes promotion of opportunities to participate in age- and developmentally appropriate activities.

- 15 42 U.S.C.A. § 675(5)(B)(C) (West 2015).
- 16 42 U.S.C.A. § 671(a)(12) (West 2015).
- 17 The John H. Chafee Foster Care Independence Program, 42 U.S.C.A. § 677 (West 2015) provides states funds to serve youth who are likely to remain in foster care until at least age 18, and assist them in making a successful transition to adulthood. While the Chafee Act always offered states great flexibility in how funds could be used to support transition-age youth, the Preventing Sex Trafficking and Strengthening Families Act added the following to the purpose section of the Chafee Act: “to ensure children who are likely to remain in foster care until 18 years of age have regular, ongoing opportunities to engage in age- or developmentally-appropriate activities as defined in section 475(11).” 42 U.S.C.A. § 677(a)(8) (West 2015). Three million dollars were also added to the Chafee Act appropriations, beginning

in 2020, to provide states the increased capacity to meet the normalcy needs of youth.

- 18 Thus, facilities such as residential treatment centers funded by Medicaid, state or local dollars should still be required to apply the reasonable and prudent parent standard and promote normalcy if the child welfare agency has placement and care responsibility of the child and has made the placement pursuant to that relationship. This is supported by 42 U.S.C.A. § 675(10)(A) (West 2015), which defines the standard in relation to children in “foster care.” The federal definition of “foster care” is as follows: “Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. *This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.*” 45 C.F.R. § 1355.20(a) (2012) (emphasis added).

appendix

ADVANCING SFA

NORMALCY PROVISIONS

JIM CASEY YOUTH OPPORTUNITIES INITIATIVE

THE ANNIE E. CASEY FOUNDATION

1

Every Youth Has a Right to Access Age- or Developmentally Appropriate Activities

California Law

Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state, or local regulation, or policy may prevent, or create barriers to, participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall use a reasonable and prudent parent standard in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver shall take

reasonable steps to determine the appropriateness of the activity in consideration of the child’s age, maturity, and developmental level.

Ca. Welf. & Inst. Code § 362.05(a) (1)

Nebraska Law

Rights of Child

Every child placed in a foster family home or child-care institution shall be entitled to participate in age or developmentally appropriate extracurricular, enrichment, cultural and social activities.

Nebraska Revised Statute 43-4704

The department shall ensure that each foster family home and child-care institution has policies consistent with this section and that such foster family home and child-care institution promote and protect the ability of children to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

Nebraska Revised Statute 43-4706 (1)

Pennsylvania Law

[A] child in an out-of-home placement is allowed and afforded an opportunity to engage in, to the greatest extent possible,

age-appropriate or developmentally appropriate activities and experiences. A child with a disability or special need in an out-of-home placement shall have the same access to age-appropriate or developmentally appropriate activities and experiences as the child’s nondisabled peers, even if reasonable accommodations are required.”

Act 75 of 2015, § 4 (a)

2

Child Welfare Agencies Set a New Expectation That Every Child and Youth Will Have Access to and Participate in Age-Appropriate Activities

Florida Law

The department and community-based care lead agencies are required to verify that private agencies providing out-of-home services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities.

Fl. Stat. Ann § 34.4091 (3)(c)

California Law

Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age appropriate extracurricular, enrichment, and social activities.

Ca. Welf. & Inst. Code § 362.05

Tennessee Policy Guidance

The goal of exercising the reasonable and prudent parent standard in the child welfare context is to try to normalize the experience of youth in care so that they have the opportunities and experiences that all youth do that mark a healthy childhood and adolescence. Foster parents and caregivers should keep the following in mind as they exercise the standard:

- a) Encourage the child/youth, dependent upon his/her age and maturity level, to engage in appropriate activities such as social and extracurricular events, service/learning or volunteering, vocational opportunities or employment, contact with family members and prudent phone use. ...
- j) Look for opportunities to teach independence, starting

in childhood. Giving choices, encouraging (reasonable) risk-taking and allowing a child to make mistakes are all ways that parents build the skills that make independence possible. ...

l) Afford the child/youth opportunities for social and recreational development that are normal life experiences. The child/youth may attend overnight or planned activities if the activity is determined by the licensed foster home to be safe and appropriate. The foster parent will have knowledge of where and with whom the child is staying and the type of supervision and care the child will be receiving before approving an outing or overnight activity.

m) Youth 16 and older should have the opportunity to obtain driver's training and a license, when appropriate. Please refer to *Driver's License Guide*.

Tennessee Department of Children's Services Protocol for Reasonable and Prudent Parenting, Section 2, Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes (Effective Date, April 2016), available at <https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudentParenting.pdf>



The State's Definition of the Reasonable and Prudent Parent Standard Clearly Defines and Conveys Its Scope

California Law

Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state or local regulation or policy may prevent, or create barriers to, participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall use a reasonable and prudent parent standard in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or

his or her responsible designee, and a caregiver shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

Ca. Welf. & Inst. Code § 362.05(a)
(1)

Pennsylvania Law

Reasonable and prudent parent standard. — When using the reasonable and prudent parent standard:

- (1) A caregiver must consider all of the following:
 - (i) The child's age, maturity and developmental level to maintain the overall health and safety of the child.
 - (ii) The potential risk factors to the child or to others and the appropriateness of the extracurricular, enrichment, cultural or social activity or experience.
 - (iii) The best interest of the child, based on information known by the caregiver.
 - (iv) The importance of encouraging the child's emotional and developmental growth.
 - (v) The importance of supporting the child in developing skills to successfully transition to adulthood.
 - (vi) The importance of providing the child with the most family-like living experience possible.

(vii) Any special needs or accommodations that the child may need to safely participate in the activity or experience.

(2) The child's wishes, though not determinative, may also be considered.

Act 75 of 2015 § 4 (c)

Tennessee Policy Guidance

Tennessee Department of Children's Services Protocol for Reasonable and Prudent Parenting Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes

The Preventing Sex Trafficking and Strengthening Families Act (HR 4980) signed into law September 29, 2014, attempts to expand the opportunities for youth in foster care to participate in developmentally appropriate activities such as field trips, sleep overs and other extracurricular activities. These experiences allow youth to build skills, while developing talents, and healthy relationships with peers and supportive adults. New experiences and opportunities — even healthy risk taking — helps youth discover who they are and learn important decision-making skills when they are supported by nurturing caregivers. The new law requires states to support the healthy development of youth in care through implementing “reasonable and prudent parent” guidelines for decisions made by foster parents or caregivers.

*Caregiver is defined as a designated prudent parent in a congregate care facility.

Exercising the Reasonable and Prudent Parent Standard

A. Considerations in Exercising the Standard

- a) DCS & contract agencies adhere to the practice of care provided by a foster parent or Caregiver in determining whether to allow a child or youth in his or her care to participate in age and developmentally appropriate activities. Examples of such activities include, but are not limited to, extracurricular enrichment, and social activities that may include: dating, outdoor activities, “hanging out” or “sleepovers” with friends, art, poetry, prom, sports, clubs, recreation, vocational & volunteer activities, hobbies, religious/cultural events, field trips, driver's education, birthday parties, etc.
- b) As discussed in more detail below, this may also include activities that support a youth in exploration of their cultural, religious, racial or ethnic identity as well as their sex or gender orientation.
- c) The reasonable and prudent parent standard is characterized by careful and thoughtful, parental decision making that is intended to maintain a child's health, safety and best interest while encouraging the child's emotional, academic and developmental growth. This will

generally be impacted by the child's length of stay in the placement and the foster parent's understanding of the child's strengths and needs. Parents need to talk, read and interact with their children, but what parents really need to know is how they interact makes all the difference in the development of their children's vocabulary, comprehension and critical-thinking skills.

d) Foster parents and caregivers should weigh eight factors when considering the following guidelines:

- the overall age, maturity and developmental level of the child,
- the potential risk and appropriateness of the activity,
- the best interest of the child,
- the importance or impact on the child's growth, Subject: Protocol for Reasonable and Prudent Parenting Effective Date: 04/16 Supersedes: 10/15 Supplemental to: DCS Policy 16.3 & 16.8 Page 2 of 8 RDA SW22
- the relevance to a family-like experience,
- the behavioral, emotional and risk-taking history of the child and any safety plans,
- the wishes and interests of the youth, and
- how the experience for the youth might impact the foster family as a whole.

e) Foster parents and caregivers are expected to assist in the healthy development of children/youth in care through implementing "reasonable and prudent parent" decision making that supports health, safety and best interest of the child. These decisions can include opportunities for healthy risk-taking like those typically made by parents of children who are not in foster care. The protocol intends to promote "normalcy" and the ability to engage in healthy developmental appropriate activities that promote well-being for all youth in care. The reasonable and prudent parent standard should take into account that healthy risk taking is part of growing up.

f) Information regarding a child/youth's activities are regularly communicated with birth family members (when there is a birth family) within the communication plan established by the team and generally based on decisions of the team.

g) Foster parents and caregivers provide a nurturing environment that encourages emotional and developmental growth and provides the most family-like setting experience as possible.

h) Foster parents and caregivers may, at any time, consult with members of the Child and Family Team (CFTM) during the decision making process if they are unsure or confused in regard to the application of applying the guidelines. They also consult with the youth or child's

team if assistance or training is needed in regard to how to support youth with issues related to cultural, ethnic, or religious identify as well as sexual/gender orientation concerns. Foster parents and caregivers provide a nurturing, supportive, and non-discriminatory environment for youth, but are encouraged to seek support when they need assistance in doing so.

i) Foster parents and caregivers build supports within their families, friends and community networks to support growth opportunities for the children/youth in their care.

j) Foster parents and caregivers build and promote protective factors in reducing the incidence of child abuse and neglect; those protective factors include:

- Youth Resilience — helping youth manage stress and enhance their ability to function well when faced with stressors, challenges, or adversity; the outcome is personal growth and positive change.
- Social Connections — helping them have healthy, consistent relationships with people, institutions, the community, and empowered to make sound decisions.
- Knowledge of child & adolescent development — understanding the unique aspects of adolescent development; implementing developmentally and contextually appropriate best practices

and helping the youth understand their current development. Refer to DCS Policy 20.8, Reproductive Health Education and Services for more guidance on health education.

- Child’s Social and Emotional Competence — helping them develop skills and attitudes that are essential for forming an independent identity and preparing for a productive, responsible, and satisfying adulthood. Subject: Protocol for Reasonable and Prudent Parenting Effective Date: 04/16 Supersedes: 10/15 Supplemental to: DCS Policy 16.3 & 16.8 Page 3 of 8 RDA SW22
- Concrete supports in times of need — helping the youth understand the importance of asking for help and advocating for oneself, receiving a quality of service designed to preserve youths’ dignity, provide opportunities for skill development, and promote healthy body and mind development.

B. Encouraging Access to Age-Appropriate Activities and Promoting “Normalcy”

The goal of exercising the reasonable and prudent parent standard in the child welfare context is to try to normalize the experience of youth in care so that they have the opportunities and experiences that all youth do that mark a healthy childhood and adolescence. Foster parents and

caregivers should keep the following in mind as they exercise the standard:

a) Encourage the child/youth, dependent upon his/her age and maturity level, to engage in appropriate activities such as social and extracurricular events, service/learning or volunteering, vocational opportunities or employment, contact with family members, and prudent phone use.

b) Understand that criminal background checks, delinquency and abuse/neglect history checks may not be necessary for dating, outings, activities with friends, families, church groups or other normal school or community activities. Foster Parents should use their best judgment (defined as “would you leave your biological child with this person?”) when determining if an individual is an appropriate supervisor for the child/youth. Contact the FSW or other team members when there are questions about allowable activities at any time.

- DCS cannot pay an individual for providing supervision or care for a custodial child for the purpose of an outing/overnight stay.

c) Any out of state, out of country or continuous travel is discussed and documented. Notify court / Guardian Ad Litum (GAL) when appropriate for unruly/delinquent youth, to receive permission for trips out of State/Country. Use form CS-0679 Authorization DCS Child

to Travel out of State/country, as appropriate.

d) DCS is to be notified when any activities take the child out of the foster home for forty-eight (48) hours or more; this includes respite and allowable travel. Contact the FSW or other team members when there are questions about allowable activities when traveling out of state or out of the country. Foster parents are required to complete form CS-0679 quarterly when taking routine trips right over the state lines (grocery shopping, or recreation).

e) Establish reasonable, age appropriate boundaries and curfews and encourage respect for boundaries and curfews. Child/youth understands the parental expectations regarding curfew.

f) Refrain from the use of terminology such as “foster child”, “Level 2 child”, “Level 3 child” and “group home child” outside of the team setting. Ask the child/youth what they want to be called.

g) School is identified as a safe place, therefore limit professional visits to the school unless it’s an emergency or a necessary educational meeting, to avoid stigma. DCS and partners should strive to promote less academic interference by attempting to schedule court appearances and/or CFTM’s that are conducive to the youth’s academic schedule. Parent involvement is encouraged and can be defined as the active, ongoing participation of a Foster Parent in the education of his or her child.

Parents can demonstrate involvement at home by reading with their children, helping with homework, and discussing school events or at school by attending functions or volunteering in classrooms.

h) Allow participation in appropriate computer or electronic activities, including cell phones usage and social media with the permission or supervision of foster parents.

i) Ensure allocation of age appropriate allowances and encourage appropriate money management.

j) Look for opportunities to teach independence, starting in childhood. Giving choices, encouraging (reasonable) risk-taking and allowing a child to make mistakes are all ways that parents build the skills that make independence possible.

k) Avoid the use of confidentiality requirements of department records to restrict the child's participation in customary activities appropriate for the child's age and developmental level. For example, encourage pictures taken for publication in a newspaper or yearbook or for purposes of public recognition for or being part of a team or accomplishments if not identified as a foster child. Ask the child what they want.

l) Afford the child/youth opportunities for social and recreational development that are normal life experiences. The child/youth may attend overnight or planned activities if the activity is determined by

the licensed foster home to be safe and appropriate. The foster parent will have knowledge of where and with whom the child is staying and the type of supervision and care the child will be receiving before approving an outing or overnight activity.

m) Youth 16 and older should have the opportunity to obtain driver's training and a license, when appropriate. Please refer to Driver's License Guide.

n) DCS may utilize delegated purchase authority (DPA) and Independent Living Wrap Around Funding to support pro-social and extracurricular activities for all ages. (Refer to the Independent Living Wraparound Services Grid for eligibility and funded activities). This is not limited to just school activities. Consider use of TFACA Walk Me Home Funding or Community Advisory Boards (CABS) for assistance.

o) Positive reinforcement for children is encouraged and FSW's and child placing providers should use Independent Living Wrap Around good grades incentives as rewards for good grades for youth 14 and older.

C. Guide for Normalcy Activities

See additional attachments for a guide to activities that can promote and encourage normalcy. Engaging in these behaviors is a natural, normal means of healthy development. It is also a way for children

and youth to develop skills to mature into high functioning adults:

a) Independent Living Youth Handbook

b) A Guide for Youth in Foster Care

Special Considerations for Exercising the Reasonable and Prudent Parent Standard

One of the characteristics of adolescence is exploring identity and a sense belonging. Youth do this through participating in activities that enrich their talents and interests, but also through seeking to understand and identify in terms of race, ethnicity and religion. This exploration may also take the form of exploring or questioning sexual and gender identify. Youth are supported through a safe environment to explore these issues, therefore, it may be necessary for foster parents and caregivers to seek outside training, support or expertise.

Another special consideration in exercising the reasonable and prudent parent standard is identifying and eliminating barriers that particular groups of youth may face to participating in age and developmentally appropriate activities. For example, youth who are pregnant or parenting and youth with disabilities may need additional support to participate in age appropriate activities. Identifying and arranging these supports are part of exercising the standard and are included in the case plan.

I. Cultural Awareness

Racial and Ethnic Identity:

A young person's identity is directly linked to his or her cultural and ethnic heritage. One of the ways to support a youth in embracing his or her cultural identity is through recognition and acknowledgement of holidays, traditions, rituals, food preferences and customs that may be part of their cultural heritage. Foster families or caregivers could choose to attend community-sponsored cultural events, ethnic fairs, art and music festivals, tribal pow-wows and other celebrations and events that recognize ethnic identities.

Hair and Skin Care Considerations:

Appearance is important to all of us, including foster children. Foster parents caring for children of a different ethnicity may experience hair and skin care practices quite different from their own. Consulting with a child's immediate and extended family members for advice regarding any body modifications, hair and skin care techniques is the best way to gain specific knowledge about caring for a child's hair, skin and body. When this is not possible, consultation with the caseworker for the child/youth or someone that has additional knowledge in the field may be warranted.

2. Religion and Spirituality

Choosing and practicing a religion is generally considered among the rights that parents have with respect to their children that is protected by the US Constitution and remains intact even when a child enters foster care. These rights are not limited by this protocol. Nevertheless, the following principles should be kept in mind when a youth asks to participate in a religious activity and when involving youth in a caregiver's religious practices.

- a) The child's parents have the right to express preferences in regard to religion, spirituality or related activities for their child.
- b) The age-appropriate child can choose the religious or spiritual activities in which he or she wants to participate.
- c) The Family Service Worker (FSW) can help negotiate any challenges related to differing religious and spiritual practice between the foster family, the child and his or her biological family.
- d) The foster family/caregiver's religion or spirituality may be an important part of their family life. It is acceptable to invite a child to participate, but never to impose a religious practice on the child/youth.

3. Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) Youth

Exploring sexual and gender identity is a typical part of growing up. Youth identifying as LGBTQ should be provided the same opportunities as any other child/youth. At the same time, they may need additional or special support to manage exploration of their identity in a safe and nurturing environment. This may include: participating in LGBTQ support groups, or the activities of LGBTQ organizations, or experimentation with different styles of dressing and self presentation. Flexibility is needed for youth participating in activities that would create safe spaces for LGBTQ in foster care. Caregivers should seek assistance and information on resources and opportunities for these youth if not aware of them and seek consultation with the child/youths worker, when needed. In order for youth to find activities that best suit their specific identity, locations of the activity might be further away and therefore require accommodating transportation and or adjusting a curfew. Refer to DCS Policy 20.20, Guidelines for Managing Children/Youth in DCS Custody Related to Sexual Orientation, Gender Identity and Expression for additional information.

Some additional considerations for LGBTQ youth may include:

- Providing and securing clothing that is aligned with the youth's personal gender identity.

- Use of pronouns that the youth has requested ex: he, she and proper name usage.
- Access to health services that specialize in gender identity needs.
- Following the treatment plan set out by the health care provider with special attention to any gender related medical conditions.
- Support and advocacy for LGBT students/individuals in social and educational setting as requested by youth.
- Checking in with child/youth to ensure they feel supported and accepted in home.

4. Pregnant and Parenting Youth:

a) Pregnant and parenting youth—mothers and fathers—may face additional barriers to experiencing “normalcy” that should be addressed in the case plan. Mothers and fathers should be supported in their roles as parents as well as in participating in age appropriate activities. Hands on and other parenting instruction should be provided and a youth’s right as a parent should be respected and supported in their placement setting. Arrangements for child care must also be made so that parents have the opportunity to pursue their educational and employment goals as well as extra-curricular and enrichment experiences.

b) Fathers should be supported and included in pre-pregnancy activities

and upon birth of their child to support the development of a strong bond with their child and an appropriate co-parenting relationship with the child’s mother.

c) Minor parents retain all rights to their children as a non-minor parent would regardless of whether they are in the child welfare system. However, if a child is removed from a dependent child based on abuse, neglect or a voluntary placement, reasonable efforts must be made to keep parent and child together.

d) If there is a minor parent in foster care, and if there is no relative/kinship placement available for both the infant child and the minor parent, placement of the infant child with the minor parent will be discussed with the Regional Administrator or Designee prior to a final decision. If there is a need for additional support to the infant, mother and Foster parents, form CS-0674, Special/Extraordinary Rate Request is completed and considered to support the child’s placement with the minor parent. Refer to DCS Policy 16.36, Title IV-E Foster Care Funds and 16.29, Foster Home Board Rates.

5. Youth with Disabilities

a) Youth with disabilities and special needs should have access to the same opportunities for participation in age and developmentally appropriate activities as their peers without special needs. Under federal

and state law, individuals with disabilities cannot be excluded from services and benefits provided by the child welfare agency based on their disability. The obligation to provide normalcy and access to age and developmentally appropriate experiences applies to all youth in the care of the child welfare agency. The child welfare agency and its representatives must make reasonable accommodations for the youth if there are barriers to participation based on the youth’s disability. Schools and the majority of providers of organized activities and public accommodations are obligated to refrain from discrimination based on disability and provide reasonable accommodations.

b) Foster parents and caregivers work with the youth’s treatment providers and CFTM to identify what services or supports may be needed to overcome barriers to participation. In some cases, overcoming barriers may involve providing advocacy for the youth so that a service provider, school, or organization provides accommodations to a youth. In other cases, the child welfare agency may be making or providing the accommodation. For example, the child welfare agency can provide a sign language interpreter so that a youth who is hearing impaired can participate in an Independent Living Program event or group.

c) Accommodations and supports that make age-appropriate experiences a reality for youth with disabilities can come in an array of

forms. Sign language interpreters, physical modifications, and specialized instruction are among the most familiar types of accommodations. However, the CFTM should be as creative as possible in devising accommodations for youth that can help provide exposure to community and other activities. A youth's behavior related to a trauma history or other diagnoses should not preclude activities and access to the community. Rather, strategies should be devised to enable participation to the greatest extent possible. Accommodations may include increased supervision, de-escalation and safety plans, and coordination with other service providers.

d) The caregiver and CFTM are encouraged to seek assistance regarding accommodations and opportunities for youth with disabilities from community resources and experts, such as Disability Rights Tennessee at 1-800-342-1660 and the Vanderbilt Kennedy Center at 615-322-8240.

6. Foster Parent Responsibility and Liability

1. Supervision of Children and Youth Doing Age-Appropriate Activities

a) These guidelines aid the foster parent and caregiver in making informed decisions regarding a child/youth participating in activities and social events under the supervision of an adult who the

foster parent considers safe. Foster parent judgments consistent with these guidelines are considered appropriate.

b) The Foster Parent should use their best judgment (defined as “would you leave your biological child with this person”) when determining if an individual is an appropriate supervisor for the child/youth. Factors that should be considered include, but are not limited to: the foster parent's relationship with the individual, length of time the child/youth will be with individuals other than the foster parent, group activities that should be allowed and if the care of the child with this person is routine then a background check is required. If this is an emergency situation and the foster parent would leave their own child with this person, then background checks are not necessary.

2. Liability and Protections for Liability

Generally, a DCS foster parent or caregiver is not liable for harm caused to a child who participates in an activity provided that the foster parent or caregiver has acted in accordance with DCS policy, which includes this protocol. This protocol does not remove, limit, or add any existing liability protection provided by law. These include:

a) A DCS foster parent is considered a state employee for purposes of the Claims Commission. This means

that if a negligent act is committed and the foster parent is operating under DCS policy and guidelines; ordinarily, the foster parent will not be personally liable and the claim against the foster parent will be converted to a claim against the State.

b) Contract provider agencies are mandated under federal law (HR4980) to provide access to the same activities and experiences as described in this protocol for all children and youth in their care. Refer to the standard Terms and Conditions language within the agreed upon contract.

c) As the law is written, a caregiver or child placing agency, which is acting in good faith and in compliance with the standard, would not ordinarily be civilly liable for an injury that occurred in accordance with the reasonable and prudent parent standard. However, the caregiver or child placing agency would not ordinarily qualify for this civil immunity if the injuries to the child were caused by gross negligence, willful or wanton conduct, or intentional wrongdoing

[Tennessee Department of Children's Services Protocol for Reasonable and Prudent Parenting, Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes \(Effective Date, April 2016\), available at https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudentParenting.pdf](https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudentParenting.pdf)

4

Case Planning Meetings Should Include Discussions of Participation in Age- and Developmentally Appropriate Activities and Case Plans Should Document Goals and Progress in This Area

Florida Law

The age-appropriate activities and the authority of the foster parent, family foster home, residential child-caring agency or caregiver shall be developed into a written plan that the foster parent, family foster home, residential child-caring agency or caregiver, the child and the case manager all develop together, sign and follow. This plan must include specific goals and objectives and be reviewed and updated no less than quarterly.

Fl. Statutes § 409.1451 (a)(3)

Pennsylvania Law

Consistent with its case and placement planning responsibilities under Federal and State law, ensure that the child's service plan provides the opportunity to participate in age-appropriate or developmentally

appropriate activities and experiences to the greatest extent possible to promote healthy child and adolescent development. A child's service plan shall include goals and objectives, and the child's progress toward meeting the goals and objectives, for the following:

- (i) Participation in extracurricular, enrichment, cultural and social activities.
(ii) For a child who is 14 years of age or older, providing opportunities to gain experience in mastering skills needed to transition to successful adulthood and managing freedom and responsibility.

Act 75 of 2015 § 6 (5)

Washington State Law

(a) Caseworkers shall discuss the child's interest in and pursuit of normal childhood activities in their monthly health and safety visits and describe the child's participation in normal childhood activities in the individual service and safety plan.

(b) Caseworkers shall also review a child's interest in and pursuit of normal childhood activities during monthly meetings with parents. Caseworkers shall communicate the opinions of parents regarding their child's participation in normal childhood activities so that the parents' wishes may be appropriately considered.

RCW 74.13.710 (5)

5

Courts and Administrative Reviewing Entities Are Well Informed of the Importance of Normalcy and Incorporate Oversight of Access to Age- and Developmentally Appropriate Activities Into All Status and Permanency Reviews

Pennsylvania Law

Matters to be determined at permanency hearing. At each permanency hearing, a court shall determine all of the following:

If the child has been placed with a caregiver, whether the child is being provided with regular, ongoing opportunities to participate in age-appropriate or developmentally appropriate activities. In order to make the determination under this paragraph, the county agency shall document the steps it has taken to ensure that:

- (i) the caregiver is following the reasonable and prudent parent standard
(ii) the child has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. The county agency shall consult with the child

regarding opportunities to engage in such activities.”

42 Pa. C.S.A. § 6351 (f)(12)

6

Enact a Youth-Friendly and Responsive Grievance Policy

New Mexico Administrative Code

In situations in which a child age 14 or older disagrees with a decision made under the prudent parent standard, the child shall request a review of the decision in writing. The decision shall be reviewed by a neutral three-person panel. This process does not preclude any party from seeking a court order regarding the decision.

8.26.2.13 NMAC (F)

Suggested Draft Model Policy or Law

The Children and Youth Grievance Policy.

A. Within ____ months the child welfare agency shall promulgate written policies and procedures governing the filing and resolution of a grievance by or on behalf of a child served by the child welfare agency.

B. To develop the policy that will be promulgated by the child welfare agency, it shall convene a community stakeholder group that shall include at least two representatives from the following groups/interests:

- a. Current and former foster youth.
- b. Biological parents.
- c. Kinship caregivers.
- d. Foster parents.
- e. Attorneys for children.
- f. Attorneys for parents.
- g. Child welfare agency leaders.
- h. Private providers of child welfare services.
- i. Court personnel.
- j. _____(include other stakeholders here)
- k. _____(include other stakeholders here)

C. The policy promulgated by the child welfare agency must at least include the following components:

- a. The grievance procedures shall be clearly written and easy to understand by children and youth of all ages.
- b. The grievance policy shall be reviewed with youth at all service plan meetings and upon any placement change. (Add other decision points or events that may be useful to revisit notification).

c. Youth must be informed that grievances will be confidential.

d. Youth must be informed that they will face no retaliation if they file a grievance.

e. The process for filing a grievance must be easy for youth to access. (Include any specifics, such as having a call in line, or online system).

f. Assistance to file a grievance must be easily available to youth in all placement settings.

g. The schedule for response and resolution of grievances must be clear and responsive to a youth’s sense of time.

h. There must be an element of independence in the grievance resolution process.

i. There must be mechanisms for appeal and access to higher and independent levels of review.

D. The child welfare agency must provide a yearly report to the legislature that will be made public that details the number of grievances filed by youth, the categories of subjects of grievances, the resolutions reached, the placement types from where grievances were filed, _____ (include other data or information you would like to be reported).

7

Bill of Rights Are Enacted That Include the Right to Have Opportunities to Access Age- and Developmentally Appropriate Activities, to Have the Force of Law and to File a Grievance

California Law

(a) It is the policy of the state that all minors and nonminors in foster care shall have the following rights:

- (1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.
(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.
(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.
(4) To receive medical, dental, vision, and mental health services.
(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.
(6) To contact family members, unless prohibited by court order,

and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers.

- (7) To visit and contact brothers and sisters, unless prohibited by court order.
(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.
(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.
(10) To attend religious services and activities of his or her choice.
(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.
(12) To not be locked in a room, building, or facility premises, unless placed in a community treatment facility.
(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities,

consistent with the child's age and developmental level, with minimal disruptions to school attendance and educational stability.

- (14) To work and develop job skills at an age-appropriate level, consistent with state law.
(15) To have social contacts with people outside of the foster care system, including teachers, church members, mentors, and friends.
(16) To attend Independent Living Program classes and activities if he or she meets age requirements.
(17) To attend court hearings and speak to the judge.
(18) To have storage space for private use.
(19) To be involved in the development of his or her own case plan and plan for permanent placement.
(20) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.
(21) To be free from unreasonable searches of personal belongings.
(22) To the confidentiality of all juvenile court records consistent with existing law.

(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(24) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.

(25) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(26) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(27) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the

prevention and treatment of sexually transmitted infections at 12 years of age or older.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (26) of subdivision (a).

California Law, Ca. Welf. & Inst. Code Sec.16001.9

8

Caseworkers and Supervisors Are Trained on the Reasonable and Prudent Parent Standard and All Normalcy Aspects of the Strengthening Families Act

Pennsylvania Law

Section 5. Obligations of department.

The Office of Children, Youth and Families of the department shall do all of the following:

(1) Require, as a condition of licensure for county and private foster family care agencies and facilities providing out-of-home placements, the development of standards and training relating to the reasonable and prudent parent standard. The standards and training shall include, but are not limited to, the following:

(i) knowledge and skills relating to the developmental stages of the cognitive, emotional, physical and behavioral capacities of a child; and

(ii) knowledge and skills relating to applying the reasonable and prudent parent standard to:

(A) decisions such as whether to allow a child to engage in extracurricular, enrichment, cultural and social activities, including sports, field trips and overnight activities lasting one or more days;

(B) decisions involving the signing of permission slips and arranging transportation for the child to and from extracurricular, enrichment, cultural and social activities; and

(C) methods for appropriately considering the concerns of the biological parents of a child in decisions related to participation

of the child in activities, with the understanding that those concerns should not necessarily determine the participation of the child in any activity.

Act 75 of 2015, § 5 (1)

Policy recommendation: Consider including other content areas to be included in the training, such as:

- Knowledge and skills related to affirming a child’s racial, ethnic, cultural heritage or identity.
- Knowledge and skills related to supporting/affirming a child’s sexual orientation or gender identity.
- Knowledge and skills related to activities and opportunities in the community as well as foundations and scholarships to help cover costs.
- Knowledge and skills related to requesting accommodations for individuals with disabilities.
- Knowledge and skills related to identifying and addressing barriers to experiencing normalcy in group care.

9

Develop a Policy and Process to Estimate and Address Potential Additional Costs of Implementing the Normalcy Provisions to Ensure Access to Age- and Developmentally Appropriate Activities

Tennessee Administrative Policy

The state child welfare agency may utilize delegated purchase authority and Independent Living Wrap Around Funding to support pro-social and extracurricular activities for all ages.... This is not limited to just school activities. Consider use of TFACA Walk Me Home Funding or Community Advisory Boards for assistance.

Encouraging Access to Age-Appropriate Activities and Promoting “Normalcy,” Section 2 (n) Tennessee Department of Children’s Services Protocol for Reasonable and Prudent Parenting, Supplemental to DCS Policy: 16.3, Desired Characteristics of Foster Parents and 16.8, Responsibilities of Approved Foster Homes (Effective Date, April 2016), available at <https://files.dcs.tn.gov/policies/chap16/ProtocolReasonablePrudent-Parenting.pdf>

California Proposed Legislation

SECTION 1.

The Legislature finds and declares all of the following:

(a) California foster youth face many challenges. Approximately three-fourths of youth in foster care have spent two or more years in the system between birth and 12th grade. While in foster care, about 70 percent of youth had three or more placements. Less than half of all foster youth complete high school.

(b) Although the state has seen a reduction in the number of children in foster care and a decreased reliance on group homes, it continues to struggle to find stable, fulfilling families for children.

(c) Participating in enrichment activities, including, but not limited to, sports leagues, camps, college preparation courses, arts, music, and formative social experiences, can greatly contribute to a foster youth’s sense of normalcy and increase the likelihood of a successful transition to adulthood.

SECTION 2.

Section 16007 is added to the Welfare and Institutions Code, to read: 16007.

(a) The purpose of this section is to establish the California Foster Youth Enrichment Grant Program, which will provide grants to foster youth to

participate in activities that enhance their skills, abilities, self-esteem, or overall well-being.

(b) On or before March 1, 2017, the State Department of Social Services shall convene a workgroup composed of individuals and groups that represent the interests of foster youth. The workgroup shall develop an implementation plan to maximize the California Foster Youth Enrichment Grant Program's impact.

(c) On or before January 1, 2018, upon appropriation by the Legislature and in consideration of the plan developed pursuant to subdivision (b), the State Department of Social Services shall establish the California Foster Youth Enrichment Grant Program to provide grants to qualified foster youth to enable the foster youth to participate in activities that enhance the foster youth's skills, abilities, self-esteem, or overall well-being.

(d) A grant shall be awarded to a foster youth who meets all of the following eligibility criteria:

(1) Is in foster care under the placement and care responsibility of a county welfare department, county probation department, Indian tribe, consortium of tribes, or tribal organization that has entered into an agreement pursuant to Section 10553.1.

(2) Is 6 years of age to 21 years of age, inclusive.

(3) Is enrolled in an elementary, middle, or high school, or an

equivalent educational program, or in a postsecondary educational institution in California.

(e) Grants awarded under this section for activities that contribute to the enhancement of an individual foster youth's skills, abilities, self-esteem, or overall well-being shall be five hundred dollars (\$500) or less. Grants shall be used to fund a program, service, or product, and any directly related costs, that provide any of the following to a foster youth:

(1) Skill development, including, but not limited to, lessons in music, dance, or drama, and the rental or purchase of equipment needed to further skill development.

(2) Academic or school-related assistance, including, but not limited to, school trips, college campus visits, Advanced Placement or International Baccalaureate exam fees, test preparation courses or materials, and books.

(3) Recreational or social participation, including, but not limited to, summer camp attendance, sports league participation, school-sponsored formal dance attendance, and participation in school graduation activities.

(f) Applications for grants under this section shall be on forms developed by the department, and shall include, at a minimum, all of the following:

(1) Evidence that the applicant meets the eligibility criteria specified in subdivision (d).

(2) A description of the need for and proposed use of the grant, the anticipated cost of the program, product, or service, and directly related costs, and the projected benefit to the foster youth.

(3) Any other information that the department determines is necessary to further the intent of this section.

(g) Within six months after a grant is awarded, the recipient shall submit documentation, on forms developed by the department, that describes how the grant was used and the actual cost, supported by copies of receipts, of the program, product, or service, and directly related costs, purchased with the grant. A foster youth shall not be eligible for a subsequent grant until this documentation is received.

(h) (1) On or before January 1, 2021, the department shall submit a report to the Legislature that addresses, at a minimum, all of the following:

(A) Data on the number of applications received, aggregated by year.

(B) Data on the number of grants awarded, aggregated by year.

(C) Data on the programs, products, or services, and directly related costs, the grants were used to fund, aggregated by year.

(D) A description of the documentation a recipient is required to submit pursuant to subdivision (g).

(E) Data on the number of recipients who provided the documentation required pursuant to subdivision (g) and who did not provide the documentation required by subdivision (g), aggregated by year.

(2) The report required pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(i) It is the intent of the Legislature that the department explore the feasibility of transitioning the program to private funding and control.

(j) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, d

AB 1984 of 2016, available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1984



Ensure That the Reasonable and Prudent Parent Standard Is Applied in All Group Care Settings and That They Have Policies and Supports in Place to Fully Implement the Normalcy Provisions and Proactively Address Barriers

Suggested Model Policy

A. The following requirements shall be incorporated into the licensing requirements for out-of-home placement settings other than family foster care and into all contracts for purchased services between the child welfare agency and a private agency that operates an out-of-home placement setting other than family foster care:

1. Designation of a Decision Maker.

a. Documentation that a sufficient number of individuals have been designated to exercise the reasonable and prudent parent standard to timely meet the needs of the number of youth placed in the setting.

b. Documentation that designated staff decision makers have the following credentials:

(degree, work experience, etc.) and have completed the following trainings prior to being designated:

(List any trainings in addition to the reasonable and prudent parent standard.)

2. Facility Policy for Requesting Permission to Participate in Activities.

a. Documentation that the facility has developed a policy that describes how youth will make requests to participate in activities and the time line for responses to requests.

b. Documentation that existing grievance policies have been amended, or new grievance policies have been developed, to provide youth an opportunity to appeal a denial of permission to engage in an activity.

3. Youth Notification and Case Planning.

a. Documentation that the facility has developed a policy for how youth will be notified at least every six months of the right to engage in age- and developmentally appropriate activities.

b. Documentation that the facility's case plan and case planning procedures have been amended to incorporate notification of the right to participate in age-appropriate activities and the inclusion of goals and action steps in the case plan related to participation in age-appropriate activities and normalcy.

4. Facility Normalcy Plan.

In addition to implementing the reasonable and prudent parent standard, each facility must develop a plan to demonstrate its capacity to address barriers to normalcy that are inherent in the structure of group care. This plan must at least include the following:

a. Documentation that all staff have been trained on child and adolescent development and the importance of normalcy to child development.

b. Documentation that all facility policies, including policies on permission, staffing, supervision and consent to age-appropriate activities have been revised to be consistent with the reasonable and prudent parent standard. This includes revisions and potential elimination of level systems, which effectively pre-empt the exercise of the reasonable and prudent parent standard.

c. Documentation that a plan has been developed that contains

concrete actions steps for how youth placed at the facility will have access to age-appropriate activities in the facility and in the community. This must include:

i. Documentation that the norm is that youth are enrolled in the community school unless a valid IEP dictates otherwise.

ii. A list of the activities the facility provides on-site.

iii. A list of the activities that are available in the community that the facility will make youth aware of, promote and support access.

iv. A description of the facility's knowledge and capacity to provide accommodations and supports so that youth with special needs and disabilities can participate in age-appropriate activities to the same extent as their peers.

v. The facility's plan to develop a youth board that will take part in implementing the reasonable and prudent parent standard in the facility and promoting and supporting normalcy.

Nebraska Law

The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, that all children placed at the child-care institution be notified verbally and in writing

of the process for making a request to participate in age or developmentally appropriate activities and that a written notice of this process be posted in an accessible, public place in the child-care institution.

Nebraska Revised Statute 43-4706 (4)



Develop Liability Protections in Law So That Caregivers and Agencies Are Appropriately Protected When Injuries Result When the Reasonable and Prudent Parent Standard Was Exercised Properly

Nebraska Law

A caregiver is not liable for harm caused to a child who participates in an activity approved by the caregiver or by a child who participates in an activity approved by a caregiver if the caregiver has acted in accordance with the reasonable and prudent parent standard. This section may not be interpreted as removing or limiting any existing liability protection afforded by law.

Nebraska Revised Statute 43-4708

12

Provide a Report or Complete a Survey of Youth and Stakeholders to Determine the Status of Implementation at Least Annually and Make the Results Publicly Available

Nebraska Law

(1) The Normalcy Task Force is created. The Normalcy Task Force shall monitor and make recommendations regarding the implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such sections existed on January 1, 2016, in Nebraska.

(2) The members of the task force shall include, but not be limited to, (a) representatives from the legislative, executive, and judicial branches of government. The representatives from the legislative and LB746 2016 LB746 2016 - 1 judicial branches shall be nonvoting, ex officio members, (b) no fewer 2 than three young adults currently or previously in foster care which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) a representative from the juvenile 5 probation system, (d) the executive director of the Foster Care Review Office, (e) one or more

representatives from a child welfare advocacy organization, (f) one or more representatives from a child welfare service agency, (g) one or more representatives from an agency providing independent living services, (h) one or more representatives of a child care institution, (i) one or more current or former foster parents, (j) one or more parents who have experience in the foster care system, and (k) one or more professionals who have relevant practical experience such as a caseworker.

(3) On or before July 1, 2016, the Nebraska Children’s Commission shall appoint the members of the task force. Members of the task force shall be appointed for terms of two years. The commission shall appoint a chairperson or chairpersons of the task force and may fill vacancies on the task force as such vacancies occur.

(4) The task force shall provide a written report with 20 recommendations regarding the initial and ongoing implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, as such sections existed on January 1, 2016, and related efforts to improve normalcy for children in foster care and related populations to the Nebraska Children’s Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by December 15th of each year. The report to the Health and Human Services Committee of

the Legislature shall be submitted electronically.

Nebraska Revised Statute § 43-4218

13

Develop Policies That Ensure That Youth Are Provided a Meaningful Opportunity to Be Engaged in Case Planning

Nebraska Law

The transition proposal shall document what efforts were made to involve and engage the child in the development of the transition proposal and any revisions or additions to the transition proposal. The court shall ask the child, in an age or developmentally appropriate manner, about his or her involvement in the development of the transition proposal and any revisions or additions to such proposal. The court shall make a finding as to the child’s involvement in the development of the 19 transition proposal and any revisions or additions to such proposal.

Nebraska Revised Statute § 43-1311.03 (4)

