

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY LOCKE
DEPUTY CABINET SECRETARY

PROGRAM INSTRUCTION GUIDELINE 03-2021-#5

TO: Protective Services Division Staff
FROM: Annamarie Luna, Protective Services Division Acting Director
DATE: March 19, 2021
RE: Revised Youth Grievance and Bill of Rights Procedures

The purpose of this Program Instruction Guideline is to provide all PSD staff with new procedures regarding the youth initiated review of prudent parenting decision, the child or youth grievance process, the child or youth bill of rights, and the foster youth document of responsibilities.

The revised procedures contained in this PIG will replace the following procedures:

- Placement Services Procedure PR 13: Application of the Reasonable and Prudent Parent Standard; and
- Placement Services Procedure PR 14: Child or Youth Grievance Process, the Foster Child and Youth Bill of Rights, and the Foster Youth Document of Responsibilities.

Please contact Molly Clement or Farrah Fong with the Fostering Connections Bureau if you have any questions.

SOCIAL SERVICES

FOSTER CARE AND ADOPTION

PLACEMENT SERVICES PROCEDURE (8.26.2)

PR 13: APPLICATION OF THE REASONABLE AND PRUDENT PARENT STANDARD

- 1 ISSUING AGENCY:** Children, Youth and Families Department (CYFD)
Protective Services Division (PSD)
- 2 EFFECTIVE DATE:** March 19, 2021. [09-29-2015; 03-15-2016; 03-19-21]
- 3 CORRESPONDING POLICY:** 8.26.2.13 NMAC
- 4 OBJECTIVE:** To implement PSD's policy on application of the reasonable and prudent parent standard.
- 5 APPLICATION OF THE REASONABLE AND PRUDENT PARENT STANDARD:** PSD makes efforts to normalize the lives of children in PSD's custody and to empower caregivers to approve a child's participation in activities, based on the caregiver's own assessment using a reasonable and prudent parent standard. Caregivers are not required to obtain advance permission

from PSD to apply the reasonable and prudent parent standard to decisions about the care of a child in PSD's custody. Caregivers are defined as resource families, treatment foster care providers, and congregate care providers (e.g., group homes, shelters, residential treatment centers, etc.) [09-29-2015; 03-19-21]

5.1 Considerations in Applying the Prudent Parent Standard: In applying the reasonable and prudent parent standard, caregivers consider the following:

1. the desires of the child/youth including, but not limited to, cultural identity (e.g. haircuts, photos, participation in cultural activities), spiritual identity (e.g. church services and religious activities), gender identity, gender expression, and sexual orientation;
2. the child/youth's age, maturity and developmental level;
3. potential risk factors and the appropriateness of the activity;
4. the best interests of the child/youth based on the caregiver's knowledge of the child/youth;
5. the importance of encouraging the child/youth's emotional and developmental growth;
6. the terms of any court orders and any case plan applying to the child/youth;
7. the values and preferences of the child/youth's biological parent or parents, if appropriate;
8. whether the decision would bring about a permanent (e.g. tattoo) rather than a transient change to the child/youth;
9. the importance of providing the child/youth with the most safe and affirming family-like and culturally relevant living experience possible;
10. the legal rights and responsibilities of the child/youth, including the youth bill of rights and responsibilities; and
11. the Americans with Disabilities Act [9-29-2015; 03-15-2016; 03-19-21]

5.2 Activities Subject to Prudent Parenting Decisions: Age and developmentally appropriate activities that may be the subject of decisions under the reasonable and prudent parent standard include, but are not limited to, the following:

1. a cultural, social, or enrichment activity or support that fosters positive identity development;
2. a sleepover of one or more nights;
3. participation in sports or social activities, including related travel;
4. obtaining a driver's license and conditions for driving of a vehicle;
5. allowing the child/youth to travel in another person's vehicle;
6. possession and use of a cell phone;
7. obtaining a job or working for pay (e.g. babysitting, yard work); and
8. recreational activities (including, but not limited to, such activities as boating, swimming, camping, hunting, cycling, hiking, horseback riding).

Out of state travel requires additional notification and collaboration with the PSD worker. If the activity falls outside the parameters described above, the caregiver consults with the PSD worker and the child/youth's parents, unless their rights have been terminated. [03-15-2016; 03-19-21]

5.3 Consultation Between PSD and Caregivers Regarding Prudent Parenting Decisions:

Caregivers may consult with the PSD worker when uncertain or uncomfortable with a decision under consideration. If the PSD worker, or child/youth's parents, and caregiver disagree regarding prudent parenting decisions, discussions should continue until an agreement is reached. In the event an agreement cannot be reached and the caregiver's decision is reasonable and prudent, the final decision is made by the caregiver. For a guide of what different activities and responsibilities that may be age appropriate, caregivers may utilize the "Prudent Parenting Responsibilities and Activities Guide," located on the Internet. [9-29-2015; 03-15-2016; 03-19-21]

5.4 Respite Foster Care: The prudent parenting standard is expected to be different for respite resource families, as these resources do not have the same understanding of the child/youth's needs. Therefore, these resources will not approve activities that could impact the child/youth beyond the time the child/youth is in their care. If the child/youth asks the respite resource family to participate in an activity which falls under the prudent parenting standard and the respite resource family is unsure if this activity is acceptable to the resource family, the respite resource will contact the resource family or the PSD worker. [03-15-2016; 03-19-21]

5.5 Youth Initiated Review of Foster Care Provider Prudent Parenting Decisions: In situations in which a youth, age 14 or older, disagrees with a decision made under the prudent parent standard, the youth can contact the Director of CYFD's Office of Children's Rights (OCR) to request a review of the decision. This process is a non-emergency service that provides children and youth with an avenue to voice their concerns, and to create stronger communication between themselves, PSD staff and other social supports. This process does not preclude any party from seeking a court order regarding the alleged violation.

A youth can contact OCR in writing, by phone, e-mail, or in person. The youth should inform their Guardian ad Litem (GaL) or Youth Attorney that they wish to request a review of a prudent parenting decision. The GaL or Youth Attorney may assist the youth in filing the request for review. Contact information for OCR and the New Mexico Foster Child and Youth Bill of Rights and Grievance process is made available to the youth, and is also listed on the CYFD website at cyfd.org, pulltogether.org and on the NMLUYVA Facebook page. OCR records the request to review the prudent parenting decision, assigns a case number and begins collecting additional information related to the prudent parenting decision. A youth can request the prudent parenting decision be reviewed within 15 calendar days after the prudent parenting decision was made.

When a youth contacts the OCR, the Director of OCR determines if the review of decision shall be reviewed by a three person panel or if the review of decision may be resolved using an alternative method, such as, a mediated discussion between the individuals involved in the prudent parenting decision, facilitated by the OCR.

If the determination is made that a review by the three person panel is needed, the OCR shall notify the youth and the youth's Attorney or Guardian Ad Litem of the decision for a panel review within two business days of that decision. [03-19-21]

5.6 Three Person Panel: The role of a three person panel is to review prudent parenting decisions and make a determination whether or not the prudent parenting decision made by the caregiver was applied in accordance to the parameters outlined in 5.1 and 5.2 of

this procedure and to determine if the prudent parenting decision made by the caregiver shall stand or be overturned to permit the youth to participate in the requested activity.

1. The three person panel is comprised of one PSD worker (must be employed by CYFD for at minimum one year), one caregiver, and one current or former foster youth, which may be a Youth Advocate employed by CYFD. All members of the panel must be from counties outside of where the youth's case originated and where the youth is currently placed and all efforts shall be made by the OCR to convene a panel that does not have knowledge of the youth or caregiver, or supervision of the PSD workers involved in the decision process.
2. OCR cannot disclose to the three-person panel the identity of the youth requesting the review of decision, nor the caregiver or PSD worker(s) involved in the prudent parenting decision. The OCR will ensure that confidentiality will be maintained, unless the youth specifically allows in writing for their identity to be disclosed to the three-person panel, to the OCR Director. The OCR shares the non-identifying information electronically with the panel, and the panel then reviews and discusses the information provided and comes to a conclusion regarding the prudent parenting decision, making and documenting specific findings.
3. Individuals on the three person panel must receive training from OCR on the review of decision process prior to taking part in a panel. OCR and PSD shall develop a training on the review of decision and grievance policy/procedure process, including the responsibilities of the panel members and information on confidentiality.
4. The panel shall be provide written policies and procedures for reviewing prudent parenting decisions and resolving grievances developed by OCR and PSD, which will include information the panel should consider when reviewing a decision or resolving a grievance.
5. The panel may convene in person, but may also meet via phone or video conferencing. The inability to meet in person shall not delay the prudent parenting decision review process. The panel has two business days from receipt of the request to review the prudent parenting decision and to make a final determination. [03-19-21]

5.7 Caregiver Liability: PSD will hold harmless and defend its licensed caregiver in situations where they have acted and made decisions in accordance with the reasonable and prudent parent standard. [9-29-15; 03-15-16]

SOCIAL SERVICES

FOSTER CARE AND ADOPTION

PLACEMENT SERVICES PROCEDURE (8.26.2)

PR 14: CHILD OR YOUTH GRIEVANCE PROCESS, THE FOSTER CHILD AND YOUTH BILL OF RIGHTS, AND THE FOSTER YOUTH DOCUMENT OF RESPONSIBILITIES

- 1 **ISSUING AGENCY:** Children, Youth and Families Department (CYFD)
Protective Services Division (PSD)

- 2 **EFFECTIVE DATE:** March 19, 2021 [03-19-2021]

- 3 **CORRESPONDING POLICY:** 8.26.2.14 NMAC

- 4 **OBJECTIVE:** To implement PSD's policy on the child or youth grievance process, the Foster Child and Youth Bill of Rights, and the Foster Youth Document of Responsibilities.

- 5 **Child and Youth Bill of Rights and the Foster Youth Document of Responsibilities:** The New Mexico Foster Child and Youth Bill of Rights shall be posted at all times within eye-level range in public spaces in all CYFD PSD offices and in all placements, including congregate care settings. All resource families and treatment foster care providers providing care of a child/youth in custody of PSD shall post the bill of rights and grievance process in an accessible location within their home (e.g. on the refrigerator, in the child/youth's bedroom, etc.).

The child/youth's primary PSD worker provides copies of both the New Mexico Foster Child and Youth Bill of Rights and the New Mexico Foster Youth Document of Responsibilities to all children entering PSD custody and to their caregiver in the child's and in caregiver's native languages. The child/youth's primary PSD worker explains the documents and their rights to the child/youth in a manner the child/youth can understand. The child/youth signs an acknowledgement that they have received and understand the information presented in the documents, and have been given an opportunity to ask any questions regarding their rights and the documents. The caregiver also signs the acknowledgment verifying receipt and understanding. For children under age five, the caregiver signs the acknowledgement on child's behalf. Caregivers are defined as resource families, treatment foster care providers, and congregate care providers (e.g., group homes, shelters, residential treatment centers, etc.).

A copy of the signed acknowledgment is provided to the caregiver and all youth over the age of 14 and remains with the child/youth while the child/youth is in PSD custody. A copy of the signed acknowledgement is kept in the PSD case file, the resource family provider file, and is also documented in the narrative of the case management system (FACTS or CCWIS system) the date of review and acknowledgement, including the names of the caregiver(s) notified.

The Child and Youth Bill of Rights and the Foster Youth Document of Responsibilities must be reviewed with the child/youth upon entry into PSD custody, upon every placement change that occurs during custody, and, at minimum, every three months until dismissal from PSD custody. A signed acknowledgement of receipt must be signed every time the child/youth reviews the documents with a PSD worker. The child or youth shall be provided with an opportunity to ask clarifying questions regarding these documents and procedures. The Child and Youth Bill of Rights and the Foster Youth Document of Responsibilities must be reviewed with caregivers every three months. A signed acknowledgement of receipt must be signed every time a PSD worker reviews the documents with a caregiver.

The Child and Youth Bill of Rights and the Foster Youth Document of Responsibilities continues to apply to eligible adults enrolled in the Fostering Connections program and to young people receiving post-18 services. In these cases, a Fostering Connections Specialist will continue to inform eligible adults enrolled in the Fostering Connections program and young people receiving post-18 services of their Bill of Rights and Responsibilities. Eligible adults enrolled in Fostering Connections will review the document at very transition plan review and acknowledge understanding in each transition plan update. [03-19-2021]

6 Child or Youth Grievance Process: The purpose of the child or youth grievance process is to ensure all children and youth who are in PSD custody, eligible adults enrolled in Fostering Connections, or young people receiving any post-18 services from the Fostering Connections Bureau can fairly advocate for their rights. The process is a non-emergency service that provides children and youth with an avenue to voice their concerns, and to create stronger communication between themselves, PSD staff and other social supports. This process does not preclude any party from seeking a court order regarding the alleged violation. [03-19-2021]

6.1 Who Can Make a Grievance: Any child or youth in custody can file a grievance, or can have a grievance filed on their behalf. A grievance can be filed on behalf of child or youth by, including but not limited to:

1. children and youth who are in PSD custody, including children or youth placed out of state through the Interstate Compact for the Placement of Children (ICPC);
2. any PSD worker;
3. the resource family or treatment foster care provider;
4. community home, group home, shelter, or Residential Treatment Center staff;
5. the youth attorney or guardian ad litem;
6. school staff;
7. Court Appointed Special Advocates (CASA);
8. biological parents, siblings, other relatives, and fictive kin;
9. mental health providers; and
10. anyone the child or youth feels comfortable in asking for assistance.

Any eligible adult enrolled in the Fostering Connections Program or young adult receiving any post-18 services from the Fostering Connections Bureau may also file a grievance. The Fostering Connections attorney may file a grievance on behalf of an eligible adult enrolled in the program, with the eligible adult's permission. [03-19-2021]

6.2 Subject of a Grievance: A child or youth can file a grievance when they believe there has been a violation of the foster child and youth bill or rights. Eligible adults enrolled in Fostering Connections or young adults receiving any post-18 services from the Fostering Connections Bureau may also file a grievance when they believe their rights have been violated or feel they have not been granted access to the services they are eligible for and need to support their transition to adulthood.

Examples of individuals or entities who may be the subject of a grievance include, but are not limited to, any of the following:

1. Resource parents, including:
 - a. non-relative resource parents;
 - b. relative resource parents
 - c. kinship resource parents,

- d. prospective adoptive parents; and
 - e. treatment foster care parents;
2. Any CYFD employee;
 3. Foster siblings and foster youth peers;
 4. Guardians ad Litem and Youth Attorneys;
 5. Court Appointed Special Advocates;
 6. CYFD Contractors, such as behavioral health providers or contracted service providers;
 7. Youth shelters and youth shelter staff;
 8. Residential treatment facilities and residential facility staff;
 9. Community and group homes and community and group home staff; and
 10. Transitional living programs and transitional living program staff.
 11. Any other entity or individual involved in providing services or placement to a child or youth, including school or educational personnel. [03-19-2021]

6.3 Filing a Grievance: A child, youth or person acting on their behalf may contact the OCR in writing, by phone, e-mail, or in person. The child, youth or person filing on their behalf should inform the GAL or Youth Attorney that they wish to file a grievance (unless the grievance is against the GAL or Youth Attorney). The GAL or Youth Attorney may assist the child or youth in filing the grievance if appropriate. Contact information for OCR and the New Mexico Foster Child and Youth Bill of Rights and Grievance process is made available to the child or youth as indicated in paragraph 5 above, and is also listed on the CYFD website at cyfd.org, pulltogether.org and the NMLUVYA Facebook page. The OCR will assist the child or youth in making the grievance and, if appropriate, provide the child or youth with any subsequent forms.

Eligible adults enrolled in Fostering Connections or young adults receiving any post-18 services from the Fostering Connections Bureau may contact the OCR in writing, by phone, e-mail, or in person. The eligible adult should inform their Fostering Connections attorney that they are filing a grievance and request assist if needed. Contact information for OCR is made as indicated in paragraph 5 above, and is also listed on the CYFD website at cyfd.org, pulltogether.org and the NMLUVYA Facebook page. The OCR will assist the eligible adult or young person in making the grievance and if appropriate, provide them with any subsequent forms. [03-19-2021]

6.4 Investigation of a Grievance: OCR shall investigate the grievance and develop a file that is kept with the grievance in the OCR. The OCR records the grievance, assigns it a case number, and determines if the grievance can be addressed by informal resolution, such as, a mediated discussion facilitated by the OCR between the child, youth, eligible adult, or young person and individual or entity the grievance is filed against or that the grievance should be assigned to a three person panel. This determination shall be made by the OCR within two business days of receipt of the grievance.

1. When conducting an investigation, OCR shall have free and complete access to records maintained by CYFD, its divisions and any successor agencies or divisions, and by its contractors for children's placements and services. In order to investigate the grievance, OCR shall also have free and complete access to the staff of CYFD, its contractors for children's placements and services and other individuals that the OCR deems relevant to their work. CYFD shall direct all

employees and contract providers to cooperate fully with the OCR and shall assist the OCR in gaining free access to other stakeholders in the child welfare system.

2. OCR will contact the child or youth within 24 hours of a grievance being filed, if the child or youth is requesting removal from a placement. After the initial conversation, OCR will determine whether to request an emergency placement change staffing or other mitigating action to the Regional Manager and County Office Manager. If the Department is seeking removal of a child/youth from a placement in which the child/youth wants to remain, no change in placement shall occur, unless there is an immediate risk to the life and safety of the child/youth, pending the recommendation of OCR, or a determination at the 10-day hearing pursuant to Section 32A-4-14 of the Children's Code. OCR will clearly communicate their determination to the child or youth, relevant PSD staff and the Youth Attorney or GAL.
3. If the determination is made by OCR that a review by the three person panel is needed, the OCR shall notify the child, youth and the youth's Attorney or Guardian Ad Litem (unless the grievance is against the youth attorney or GAL), the eligible adult and the eligible adult's Attorney, or the young adult receiving post-18 services of the decision for a panel review within two business days of that decision. [03-19-2021]

6.5 Three Person Panel: The role of a three person panel is to make a determination whether or not there was a violation of the foster youth bill of rights or violations of prudent parenting standards as explained in PR13, and can only be utilized for grievances related thereto.

1. The three person panel is comprised of one PSD worker (must be employed by CYFD for at minimum one year), one caregiver, and one current or former foster youth, which may be a Youth Advocate employed by CYFD. All members of the panel must be from counties outside of where the child/youth's case originated and where the child/youth is currently placed and all efforts shall be made by the OCR to convene a panel that does not have knowledge of the child/youth or caregiver, or supervision of the PSD workers involved in the decision process.
2. OCR cannot disclose to the three-person panel the identity of the child/youth alleging the violation, nor identity of the individual or entity the allegations are against. The OCR will ensure that confidentiality will be maintained, unless the child, the child's GaL, or youth specifically allows in writing for their identity to be disclosed to the three-person panel, to the OCR Director. The OCR shares the non-identifying information electronically with the panel, and the panel then reviews and discusses the information provided and comes to a conclusion regarding the alleged violation(s), making and documenting specific findings.
3. Individuals on the three person panel must receive training from OCR on the grievance process prior to taking part in a panel. OCR and PSD shall develop a training on the grievance policy/procedure process, including the responsibilities of the panel members and information on confidentiality.
4. The panel shall be provide written policies and procedures for resolving grievances developed by OCR and PSD, which will include information the panel should consider when resolving a grievance.
5. The panel may convene in person, but may also meet via phone or video conferencing. The inability to meet in person shall not delay the grievance

process. The panel has five business days from receipt of the grievance to review and to make a final determination. [03-19-2021]

- 6.6 Final Decision of Grievances by the Panel:** The panel discusses the information provided by OCR and comes to a decision regarding the alleged violation. The panel has five business days from receipt of the alleged violation to make a determination, two additional business days can be requested by the panel to the Director of the OCR if additional information needs to be collected by the panel or in situations of emergencies.
1. If the child, youth, eligible adult, or young adult receiving post-18 services has provided the OCR Director with written approval to disclose their identity to the panel, the child, youth, eligible adult, or young adult receiving post-18 services shall be given the opportunity to speak to the panel and shall be offered the opportunity to be advised by their GAL, youth attorney, or CASA and to have them present when they communicate with the panel.
 2. The panel shall consider the information provided by OCR related to the investigation and may ask OCR for further information or to talk to additional individuals.
 3. Once a determination has been made by the panel, the panel shall document its specific findings in writing to the Director of OCR within one business day. The panel must include and document in writing specific recommendations for how the violation shall be remedied.
 4. The OCR notifies the child, youth, eligible adult, or young adult receiving post-18 services of their determination within two business days. OCR shall also notify the appropriate chain of command of the decision and any recommendations, including the Regional Manager or Fostering Connections Bureau Chief.
 5. If the OCR makes the finding that a right has been violated, the Regional Manager or Fostering Connections Bureau Chief shall convene a meeting with the chain of command and OCR within two business days of the panel's notification of a decision and determine the appropriate remedial action.
 6. The OCR shall document the specific remedial actions to be taken and the time frame for implementation. OCR shall verify that CYFD has implemented the remedial action.
 7. If the panel determines the rights were not violated, the OCR informs the child, youth, eligible adult, or young adult receiving post-18 services of the decision immediately upon receipt of the notification from the three person panel, and informs them they have 30 business days to dispute the decision. OCR shall assist them in making a dispute if they elect to do so.
 8. If the child, youth, eligible adult, or young adult receiving post-18 services disputes the decision, OCR shall identify a second three person panel and assigns the original grievance to the second panel to review within two business days. The second panel must review the grievance and make a determination within five business days. The original process is followed and the decision of the second panel is final. If the second panel determines the rights were not violated, Director of OCR informs the child, youth, eligible adult, or young adult receiving post-18 services of the decision.

If a child, youth, eligible adult, or young adult receiving post-18 services believes they are a victim of retaliation because of the grievance filed, then they may contact the Director of OCR to initiate a new grievance based on the alleged retaliation. The Director of OCR may submit a complaint to Human Resources for an investigation. [03-19-2021]

- 6.7 Grievances other than Violations to the Foster Youth Bill of Rights or Prudent Parenting Standard:** If a child, youth, eligible adult, or young adult receiving post-18 services feels they have been mistreated by a caregiver or other entity identified herein on paragraph 6.2, the child, youth, eligible adult or young adult receiving post-18 services shall obtain and fill out the grievance form and submit directly to the Director of OCR for review. OCR shall review the grievance and make a determination on course of action of the grievance within 2 business days of receipt of the request. OCR shall interview all parties involved in the grievance and mediate the conflict. If OCR feels the conflict requires a higher level of action, the Director of OCR may assign a three person panel to review the allegations and make a determination. [03-19-2021]