

Providing Normalcy for California Foster Youth

Background

Young people in foster care often lack access to many of the everyday experiences and activities available to their non-system involved peers. Research demonstrates that “normalcy” is essential for healthy social, emotional, and cognitive development of young people. “Normalcy” is also important in supporting youth in care to achieve permanency – lifelong connections with committed and caring adults.

However, system imposed barriers often impede the ability of youth in care to have normal relationships with family and friends inside and outside of the system, participate in extracurricular, enrichment or social activities, or experience many of the milestones non-system involved peers take for granted. Liability, confidentiality and other system concerns condition county placing agencies to impose barriers that prevent youth in care from accessing and participating in team sports, overnight field trips, proms, driver’s education, family vacations, carpools, and other activities.

California was one of the first states to pass laws to promote “normalcy” for foster youth and remove unnecessary system barriers to experiencing typical childhood and adolescent activities. AB 899 (Liu 2001) established the Foster Youth Bill of Rights that enumerated twenty-one specific rights including the rights to contact family and friends inside and outside of the system and to participate in extracurricular, enrichment or social activities. Two years later, AB 408 (Steinberg 2003) clarified the right of foster youth to participate in age and developmentally appropriate enrichment and social activities and established the prudent parent standard for foster parents in making the parenting decisions related to participation in those activities. SB 358 (Scott 2005) added “reasonable” to the prudent parent” standard, defined, and extended the standard to parenting decisions related to the use of short-term babysitters. Subsequent bills expanded and clarified these provisions to encourage the development of approaches including the use of the reasonable and prudent parent standard in day-to-day parenting decisions to ensure young people, whether supervised by child welfare or probation, in foster care are able to live as “normal” a life as possible.

In 2014, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act of 2014 (PL-113-183), mandating state child welfare systems to adopt “prudent parenting” standards allowing foster parents to make parenting decisions for foster youth and increasing federal independent living program funding to provide ongoing opportunities for foster youth to participate in extracurricular, enrichment, cultural and social activities.

Despite the federal and state laws promoting normalcy, youth in out-of-home care still struggle to realize the benefits of these laws. Some system stakeholders often overlook or fail to prioritize these provisions resulting in lax monitoring, enforcement, and oversight. Many youth, caregivers, advocates and other system stakeholders are unaware of the available legal

protections or how to enforce these provisions. Below is a summary of the laws related to normalcy and mechanisms for county placing agencies, resource parents, foster youth, advocates, and other system stakeholders to ensure that foster youth are not denied access to the childhood and adolescent experiences of their non-system involved peers.

What Laws Require Normalcy? Know Before Saying “No”.

The legal framework governing normalcy for foster youth consists of federal and state statutes, regulations, state court rules, state agency policies, local court rules and local agency policies. The hierarchy of laws starts with federal laws (statutes, regulations and federal policies) to state and local provisions. Each level in this hierarchy controls the next level below which can provide more, but not less than the level above. In other words, lower levels cannot be more restrictive than the higher levels of government and or law, but the lower levels in the hierarchy can require or provide more protections than the higher levels.



Federal Law

Under federal law, states are required to give foster parents the ability to use the reasonable and prudent parenting standard to make decisions for foster youth regarding participation in age or developmentally-appropriate activities, and provide training to foster parents on using the standard. 42 U.S.C. §671(A) (10 and 24). Federal law provides the following definition for the standard:

The term 'reasonable and prudent parent standard' means the 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, that a caregiver shall use 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. 42 U.S.C. §675(10)

Federal law also requires states to have policies that clarify the liability of foster parents when using the reasonable and prudent parent standard in making decisions regarding a child in their care. 42 U.S.C. §671(A) (10). Beginning in 2020, the federal government will provide states with additional funding each year under the Title IV-E Independent Living program to support foster youths' participation in age-appropriate activities. (PL-113-183, Sec. 111). The federal Department of Health and Human Services (HHS), the agency responsible for overseeing foster care, has not yet promulgated regulations on the reasonable and prudent parent standard.

California Law

The federal law provisions described above were based in part on California law which provides greater protections for foster youth related to normalcy. The California Department of Social Services (CDSS) is the state agency responsible for overseeing and monitoring child welfare and foster care in the state. CDSS is responsible for implementing state and federal laws, promulgating regulations and issuing policy guidance related to the normalcy laws for foster youth. California has an extensive mosaic of laws related to normalcy including statutes (e.g. the Foster Care Bill of Rights in WIC § 16001.9 and the reasonable and prudent parenting standard in WIC §§ 362.05 and 727(a)(4)(F)); regulations (licensing for foster care placements in 22 CCR¹ 89000 and child welfare directives for social workers in MPP²- 31-000 *et seq.*); state policies (All County Letters (ACLs), All County Information Notices (ACINs), RFA Written Directives and CCL Provider Notices); state and local court rules; and local agency policies.

¹ California Code of Regulations (CCR) is the state's administrative code.

² CDSS publishes some regulations in its Manual of Policies and Procedures (MPP).

Foster Youth Bill of Rights

Under current law, foster youth have many rights with respect to how they are treated in care. The foster youth bill of rights specifies twenty seven (27) rights related to interpersonal relationships, social activities, religion, education, work, case planning, court, health care, permanency and transitioning from foster care. Welfare & Institutions Code (WIC) §16001.9³ and CDSS Written RFA Directives, Section 11-12 (v.5.0, effective February 6, 2018, hereafter “RFA Directive”) RFA Directive 11-08. For example, foster youth have the right to be treated with dignity and not be discriminated against; to visit with siblings and have social contacts inside and outside of the system; to have confidential phone calls and correspondence unless prohibited by court order; to attend school and participate in extracurricular, enrichment and social activities; to work, to attend religious services of their choice; to not be subject to unreasonable searches of their personal belongings, to attend ILP classes and activities; and to receive information about postsecondary education, vocational options, and reproductive health. The bill of rights also makes clear that resource parents are not required to take any action that would impair the health and safety of a foster youth. WIC §16001.9 (b).

Reasonable and Prudent Parenting

California law requires resource parents to exercise reasonable and prudent parenting in the day-to-day parenting decisions in providing care and supervision to foster youth. Health & Safety Code §1522.44 (a); see also, RFA Directive, Section 11-12. Training for resource parents must include information on knowledge and skills relating to the reasonable and prudent parent standard. WIC §§362.05 and 727(a)(4)(F); RFA Directives Section 6-06(a) (16) (Pre-Approval Training) and Section 8-01(a)(2) (Annual Training). When using the reasonable and prudent parent standard, resource parents may not deny foster youth any of the rights described above and specified in WIC 16001.9, violate court orders, or contradict the needs and services plan for the foster youth. RFA Directive Section 11-12 (a)(2). The standard does not extend to nonminor dependents (foster youth age 18 and older) who are legally adults and are authorized to make their own decisions. RFA Directive Section 11-12 (a)(1).

Resource parents must use the reasonable and prudent parent standard when making decisions regarding whether a foster youth in their care can participate in specific age or developmentally appropriate extracurricular, enrichment, cultural, and social activities (WIC §§ 362.05 and 727(a)(4)(F);) and the selection of occasional short term babysitters. WIC §362.04. The standard is defined as follows:

³ WIC 16001.9

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=16001.9

Reasonable and prudent parent” or “reasonable and prudent parent standard” means the 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, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

“Age or developmentally appropriate” means both of the following:

(A) Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group.

(B) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. WIC §362.05(c) (1) and (2).

As discussed above, foster youth are entitled to participate in age-appropriate extracurricular, enrichment, and social activities. WIC§ §362.05; 727(a)(4)(F); §16001.9(a) (13) . State and local polices related to normalcy should promote and protect the ability of foster youth to participate in age-appropriate extracurricular, enrichment, and social activities. WIC §§362.05(a)(1) and 727 (a)(4)(F). State law also provides that no state or local regulation or policy may prevent, or create barriers to, participation in those activities. *Ibid*.

In applying the reasonable and prudent parent standard, a resource parent must consider: (1) the age, maturity, and developmental level of the foster youth; (2) the nature and inherent risks of harm, and (3) the youth’s best interest based on the information the resource parent knows about the youth. 22 CCR 89377(c). The information known about the foster youth includes the youth’s history, behavioral tendencies, health, abilities, limitations, and court orders.

CDSS has issued policy guidance on the reasonable and prudent parenting standard. In the RFA Directives, ACLs, and ACINs. ⁴ CDSS’ policies interpret the statutory and regulatory provisions

⁴RFA Directives Section 11-12 <http://www.cdss.ca.gov/Portals/9/RFA/Final%20V5%20%202.6.18.pdf?ver=2018-02-06-084609-033> ; ALL COUNTY LETTER NO. 16-31 Reasonable and Prudent Parent Standard <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2016/16-31.pdf>; Reasonable and Prudent Parent Standard Resource Guide for Foster Parents http://www.cclld.ca.gov/res/pdf/RPPS_ResourceGuide.pdf; and ACIN I-17-13 QUESTIONS AND ANSWERS (Q&A) REGARDING REASONABLE AND PRUDENT PARENT STANDARDS http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2013/I-17_13.pdf

and cover the decision-making process and common questions that arise regarding the reasonable and prudent parenting standard.

In making decisions, resource parents should gather information about the activity, evaluate whether the activity is appropriate for the child, and consider any foreseeable risks. The following questions can help guide the decision:

- Does the activity seem reasonable?
- Is this activity age or developmentally appropriate for the child?
- Is this activity appropriate given the child's maturity?
- Is this activity consistent with the health, safety, and best interests of the child?
- Does this activity encourage the emotional, developmental, or cultural growth of the child?
- Does this actively assist in normalizing life in foster care?
- What are the inherent risks, hazards, or harms related to the activity? ¹ ACL 16-31 and RFA Directive Section 11-12.

However, resource parents must keep in mind the specific rights guaranteed to foster youth and restrictions imposed by court orders in making reasonable and prudent parenting decisions. The standard cannot be used to circumvent specific rights of foster youth or orders of the court. For example, a resource parent can make decision that a youth cannot use a cell phone during certain hours (e.g. at the dinner table or after bedtime) but may not decide that a foster youth cannot possess a cell phone. 22 CCR 89072 (foster youth have the right to make and receive confidential phone calls and possess their own belongings including a cell phone).

The following are common situations resource parents face when applying the reasonable and prudent parenting standard.

Supervision

Occasional Short-term Babysitter

If a resource parent anticipates being absent from the home for no more than 24 hours at a time, on an occasional basis, he or she may arrange for an occasional short-term babysitter to provide care and supervision to a foster youth. An occasional short-term babysitter may be younger than 18, but must have the maturity, experience, and ability to provide the foster youth adequate care and supervision. A foster youth may, but under no circumstances shall be

required to, act as an occasional short-term babysitter. 22 CCR 89378 (a) (1) (A) (3) and RFA Directive Section 11-13 (c) (1). The resource parent must provide babysitter with information about the child, including any medication needs, and an emergency contact number for the resource parent.

Alternative care and supervision⁵

If the resource parent anticipates being absent for more than 24 hours, the resource parent may, on an occasional basis, arrange for an alternative caregiver to provide care and supervision to a foster youth unless prohibited by the social worker, probation officer, court order, or the licensing or approval agency. 22 CCR 89378 (a)(1)(B) and RFA Directive Section 11-13 (c) (2). Alternative caregivers must be at least 18 years of age, have a criminal and child abuse clearance, be willing and able to provide the foster youth with appropriate care and supervision. The resource parent must prior to any absence verbally or in writing notify the social worker or probation officer of the name of the alternative caregiver, planned dates of absence, an emergency number where the resource parent can be reached, and receive approval from the social worker or probation officer for any absence of more than 72 hours. 22 CCR 89378 (a) (1) (B) (5) and RFA Directive Section 11-13 (c) (2). The resource parent must provide the alternative caregiver with information about the child, including any medication needs, and an emergency contact number for the resource parent. Providing care and supervision through the use of an alternative caregiver is intended to create stability and normalization for the foster youth during those infrequent instances where the caregiver will be absent from the home longer than 24 hours.

Leaving foster youth home alone

A resource parent is permitted to leave a foster youth age 10 or older home alone on an occasional basis without adult supervision, but cannot leave a foster youth unsupervised overnight. The reasonable and prudent parent standard must be used by the resource parent to determine the appropriateness of leaving the youth alone and the youth must know how to contact the resource parent, what to do in an emergency and where emergency numbers are posted. 22 CCR 89378 (a) (1) (D) and RFA Directive Section 11-13 (d).

Parked Cars

The reasonable and prudent parent standard also applies to leaving a foster youth alone in a parked car. However, the resource parent must also comply with the Vehicle Code which prohibits leaving a child 6 years of age or younger inside car without being supervised by a person 12 years of age or older, under either of the following circumstances: (1) Where there are

⁵ Regular absences require licensed care (child care or approved resource family care) and “respite care” requires the use of a licensed, approved or certified resource parent and is limited to a maximum of 72 hours per occurrence. WIC 16501(b); MPP 31-002 (r) and 22 CCR 89378(a)(1)(C).

conditions that present a significant risk to the child's health or safety; and (2) When the vehicle's engine is running or the vehicle's keys are in the ignition, or both. 22 CCR 89378(b) and RFA Directive Section 11-13 (g).

Travel

Resource Family Travel

Nothing in state statutes or regulations requires resource families to obtain a court order for, or prohibits, travel with a foster youth outside of the county or state. ACIN 1- 17-13 and RFA Directive Section 11-14 (c) (6). The reasonable and prudent parent standard applies to decisions regarding family vacations and travel for other social activities. See RFA Directive Section 11-14 (c) (6). ACIN 1- 17-13 and ACIN I-78-03. However, county placing agencies and local courts⁶ may adopt policies and rules regarding out-of-county and out-of-state travel provided that those policies and rules are consistent with WIC 362.05 and do not create undue barriers to or prevent youth from participating in social activities.

School trips and other extracurricular, enrichment and social activity travel

The reasonable and prudent parent standard explicitly applies to decisions regarding school trips and travel for other extracurricular, enrichment and social activities. WIC 362.05, RFA Directive Section 11-14 (c) (6), ACIN 1- 17-13 and ACIN I-78-03. However, county placing agencies and local courts may adopt policies and rules regarding out-of-county and out-of-state travel provided that those policies and rules are consistent with WIC 362.05 and do not create undue barriers to or prevent youth from participating in social activities.

Extracurricular, Enrichment, and Social Activities

Foster youth have the right to participate in extracurricular, enrichment, and social activities and to have social contacts outside of the foster care system. WIC§16001.9(a)(13) and (15). Extracurricular, enrichment, and social activities may include, but are not limited to sports, band, dances, field trips, bike riding, dating, socializing with friends, shopping, going to the movies, concerts, plays, gardening, outdoor adventure training, sleepover with friends, babysitting, having visitors in the home, using a computer, and having and using a cell phone.

⁶For example, San Francisco's Juvenile Court Rule 12.23 provides that the county agency is authorized to approve requests for travel within the United States and its territories (for less than 30 days) without a court order and requires the agency to provide reasonable notice to parents and all attorneys of record.

Superior Court of California, County of San Francisco, UNIFORM LOCAL RULES OF COURT (REVISED: January 1, 2018) Rule 12.23 (travel) and Rule 12.24 (refers to WIC 362.05 for participating in activities)
http://www.sfsuperiorcourt.org/sites/default/files/images/Uniform%20Local%20Rules%20of%20Court_Effective%201-1-18%20Final_1.pdf?1515525509339

22 CCR 89379 and RFA Directive Section 11-14. A resource parent may prevent a foster child from attending a specific activity as appropriate discipline for misbehavior, but the frequency and scope of that discipline cannot result in an effective denial of the youth's right to participate in extracurricular and other enrichment or social activities. ACIN 1- 17-13 and RFA Directives, Sections 11-12 (a) and 11-14.

Swimming and water activities

Resource parents may decide, using the reasonable and prudent parent standard when, where and whether a child in their care should have access to swimming and other water activities. State policy also requires resource families if they accept children under the age of 10 or persons with developmental, mental, or physical disabilities to ensure that swimming pools, fixed-in-place wading pools, hot tubs, spas, or similar bodies of water in their homes are inaccessible to both populations unless supervised by an adult swimmer. 22 CCR 89377 and RFA Directive Section 11-02.

Cell Phones

Unless prohibited by court order or the placing agency, a foster youth may acquire, possess, and use his or her own cellular telephone. 22 CCR 89379(a)(10) and RFA Directive Section 11-08(b)(3). The resource parent may place reasonable limitations on cell phone use provided that those limitations do not effectively deny youth the right to use a cell phone unless the limitation has been approved by the placing agency. 22 CCR 89377; 89379(a) (10) and RFA Directive Section 11-09. However, resource parents are not required to purchase a cell phone or pay for the youth's cell phone service.

Social Media

Foster youth may use social media. ACIN I-17-13. However, like any social activity caregivers may impose reasonable limitations using the RPPS including restricting internet usage when appropriate or prohibiting access as appropriate discipline. 22 CCR § 89372(a)(5)(B)(5); 22 CCR 84072.1(c)(4); ACIN I-17-13; and RFA Written Directive Section 11-14 (c) (9). Caregivers must also take into considerations any restrictions imposed by court orders or the placing agency pursuant to the youth's case or needs and service plan.

Religious Activities

Foster youth have the right to attend religious services and activities of their choice, not to be discriminated against because of their religion and not be forced to participate in religious activities. WIC 16001.9 (10) & (23) and RFA Directive Section 11-08 (a).

What can county agencies do to promote normalcy?

County agencies should review and revise agency policies to allow youth in foster care the ability to take part in everyday activities, without the unnecessary involvement of case managers, supervisors, other agency personnel, or the court system in approving these activities. While agencies may have policies that define these everyday activities or set parameters on time, place and manner of resource parents exercising reasonable and prudent parent decision-making (e.g. ensuring school attendance, complying with court orders, or notifying caseworker), agency policies should not create barriers to or prevent participation in everyday activities. Resource parents should be given the freedom and the support to parent, using the reasonable and prudent parenting standard. Agencies should also ensure that caseworkers and are trained on normalcy, know the agency's policies and provide youth and resource families with appropriate supports to achieve normalcy for foster youth.

What can resource parents do to promote normalcy?

Resource parents should become familiar with the laws and policies related to normalcy.⁷ Resource parents can promote normalcy for youth by encouraging youth to participate in activities and employing positive discipline practices. Engaging the youth and working with the youth's social worker and other system stakeholders to understand and support the youth's needs and interests are also important in promoting normalcy.

What can foster youth do to access activities?

Foster youth should and talk with their resource parent about the activities they would be interested in participating. They should also learn about their rights and resources for information, like the state Foster Care Ombudsman's Office⁸. If an issue cannot be resolved by talking with the resource parent, the youth can talk to his or her social worker or attorney.

⁷ See citations and footnotes above for links to state laws and policies.

⁸ Foster Care Ombudsman <http://www.fosteryouthhelp.ca.gov/OMBprog.html>; Know Your Rights <http://www.fosteryouthhelp.ca.gov/Rights2.html>