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CCLD INFORMATION RELEASE NO. 2011-04

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Initiated by CCL

TO: CHILDREN'S RESIDENTIAL PROGRAM STAFF

SUBJECT: PERSONAL RIGHTS OF CHILDREN IN OUT- OF- HOME
PLACEMENT

Welfare and Institutions Code section 16001.9 provides a list of personal rights afforded to children in out-of-home placement. The purpose of this information release is to clarify some of the recurring questions Community Care Licensing receives regarding the interpretation and application of the personal rights of children in out-of-home placement. We have highlighted a few of these personal rights below.

“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.” (Welf. & Inst. Code, section 16001.9(a)(6))

Denying a child the right to contact social workers, attorneys, foster youth advocates and supporters, CASAs and probation officers is a violation of a child's personal rights.

Denying a child the right to contact his or her family members, without a court order, also violates a child's personal rights and shall not be permitted. However, if a caregiver reasonably believes that a child is in imminent danger by contacting a family member, then the caregiver must protect the health and safety of the child and immediately restrict contact with that family member.

If this temporary restriction is imposed, then the caregiver must immediately notify the child's authorized representative. The caregiver must also file an Incident Report with their local licensing office according to regulatory requirements. A court order is required to implement ongoing restrictions of a child's right to contact a specific family member.

**“To visit and contact brothers and sisters, unless prohibited by court order.”
(Welf. & Inst. Code, section 16001.9(a)(7))**

Some children in out-of-home care have been denied the right to visit or contact brothers and sisters for reasons that include but are not limited to:

- Facility policies that impose an initial “Black Out Period” that deny a child specific rights until the child has attained a certain status level or specific number of points.
- Disciplinary actions.
- To allow the child to become acclimated to a new environment.

The above reasons for denying children the right to visit and contact siblings do not justify violating the personal rights of children in out-of-home care and are prohibited.

When a caregiver reasonably believes that a child is in imminent danger by visiting or contacting his or her brother or sister, then the caregiver must ensure the health and safety of the child and immediately restrict this personal right. If this temporary restriction is imposed, then the caregiver must immediately notify the child’s authorized representative. The caregiver must also file an Incident Report with their local licensing office according to regulatory requirements. A court order is required to implement ongoing restrictions of a child’s right to visit and contact a specific sibling.

“To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.” (Welf. & Inst. Code, 16001.9(a)(9))

Denying the right to make and receive confidential telephone calls and to send and receive unopened mail, without a court order, is prohibited.

Licensing regulations permit a caregiver to impose restrictions on telephone calls based on reasonable disciplinary measures, house rules, consideration of rights of others, case plan requirements, and documented unpaid reimbursement for long distance phone calls. If there is a court order, restrictions must be implemented according to the terms of the court order.

Nonetheless, a caregiver may not restrict telephone calls to the following: The child’s authorized representative, placement agency, family members (except by court order or as indicated above), social workers, attorneys, CASAs, and probation officers.

To ensure that personal rights are not being violated, licensees may consult with their Licensing Program Analyst.

For more information, see the Information Release No.2006-2 dated February 7, 2006 regarding the telephone access rights of children and youth in foster care <http://cclid.ca.gov/res/pdf/200602.pdf> .

“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.” (Welf. & Inst. Code, section 16001.9(b))

Welfare and Institutions Code section 16001.9(b) allows for the application of personal rights of children in out-of-home care while ensuring their health and safety. If a child’s health and safety is imminently threatened by exercising any of his or her personal rights, a caregiver must take immediate measures to ensure the child’s health and safety.

Please note that restricting certain rights to ensure the health and safety of a child does not give a caregiver unconditional authority to disregard the personal rights of children. A licensee will be cited for violating a child’s personal rights if any such restriction is unreasonable or unnecessary to protect the health and safety of the child or other children in out-of-home placement.

If you have any questions, please contact Fernando Sandoval, Manager of the Children’s Residential Policy Unit, at (916) 654-2105.

Sincerely,

Original signed by Jeffrey Hiratsuka

JEFFREY HIRATSUKA
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Community Care Licensing Division