

## RIGHTS OF CHILDREN IN OUT OF HOME PLACEMENT

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### Scope

Information regarding the personal rights of children once they are placed in a facility. Other laws and regulations exist regarding staffing, the physical plant/maintenance of the facility but will not be discussed.

## Group Home Philosophy

- Providing kids and youth with a home-like environment within a larger community
- In a house, with caring adults, learning to live with others in this environment, with the hope of some day leaving and functioning in a private home
- To the extent it is more locked-down, more restrictive, it is likely violating rights

## Group Home Staff

- Just because a parent could reasonably do something does not mean that group home staff can also do the same
- Laws and Regulations trump “reasonable prudent parent standard”

## Sources

- **California Code of Regulations**
  - 84072: Personal Rights of foster youth in community care facilities (incorporates Foster Youth Bill of Rights)
- **Welfare and Institutions Code:**
  - 16001.9: Foster Youth Bill of Rights

## Group Home Personal Rights General

- Each facility shall post a listing of residents' rights
- Each child is entitled to an age and developmentally appropriate orientation, that includes an explanation of their rights
- At her admission, the child should be personally advised of and given a copy of the list of their rights



### Group Home Personal Rights General

- To visit the facility with her relatives or authorized representative prior to admission
- To file a complaint with the facility
- To have the facility inform his authorized representatives of his progress at the facility
- To have communications to the facility from his relatives and/or authorized representatives answered promptly

### Group Home Personal Rights Possessions

- To wear his own clothes
- To use his own toilet articles
- To possess and use her own cash resources
- To possess and use her own personal items unless prohibited as part of a discipline program (narrow exception – must be related)
- To have access to individual storage space for her private use

### Group Home Personal Rights Visitation

- To have visitors visit privately during waking hours without prior notice. As long as:
  - Does not infringe on the rights of other children
  - Does not disrupt planned activities
  - Are not prohibited by court order

### Visitation (cont'd)

- Visits by the child's brothers and sisters can only be prohibited by court order
- Rules regarding visitation hours, sign-in rules and visiting rooms can be established, but shall apply to all visitors



## Group Home Personal Rights Telephone Access

- To make and receive confidential telephone calls
- Reasonable restrictions on phone use allowed:
  - Long distance calls, upon documentation of failure to reimburse
  - May have house rules about phone use (time limits and number of calls to ensure all have equal access to the phone)
  - Restrict phone use in accordance with discipline program (but may not be dependent on a level or point system or based on the time spent in the facility)
  - Ensure use does not infringe rights of others

## Telephone Access (Cont'd)

- All telephone restrictions must be documented in the facility's policies and be signed by the child's authorized representative (time/duration, etc.)
- Unless the call may infringe on the rights of others, the call cannot be restricted if it is to or from: authorized representative, family members, social workers, attorneys, CASA, probation officers, state licensing or State Foster Care Ombudsperson
  - Even if youth is on phone discipline, has unpaid long-distance charges, or if it is contrary to house rules

### Group Home Personal Rights Mail

- To send and receive unopened correspondence unless prohibited by court order
- Note: not updated with respect to electronic correspondence, but would it apply??

### Group Home Personal Rights Contact Generally

- To contact family members, social workers, attorneys, foster youth advocates, CASA's and probation officers (pretty much unrestricted)
- To contact licensing or ombudsman's office regarding violations of rights, to speak to representatives of these offices confidentially
- To be provided with address and phone number of complaint receiving unit of licensing
- To have social contacts with people outside of the foster care system (teachers, church members, mentors and friends)
- To attend court hearings and speak to the judge



### Group Home Personal Rights Contact Generally

- Social workers are not able to limit contact or designate who children can and cannot contact (visits/phone/mail)
- Only court orders can restrict contact with others
- No “approved lists”
- Best practice: social worker to inform staff who, by court order are prohibited from contacting child.

### Group Home Personal Rights Health and Well Being

- To be accorded dignity in his personal relationships with staff and other persons
- To be free of physical, sexual, emotional, or other abuse, and corporal punishment
- To be free of discrimination or harassment based on race, ethnicity, ancestry, national origin, color, religion, sex sexual orientation, gender identity, disability or HIV status



### Health and Well Being (Cont'd)

- To receive adequate and healthy food, adequate clothing and an allowance
  - No \$\$ amount specified, but must be paid once a month
- To receive medical, dental, vision, and mental health services
- To be free of the administration of medication or chemical substances, unless authorized by a physician

### Group Home Personal Rights Freedom & Civil Rights

- To be free to attend religious services or activities of her choice, have visits from spiritual advisor of her choice. Attendance at religious services shall be voluntary.
- To not be locked in any room, building, or facility premises at any time.
  - Exterior doors and windows can be locked for protection of clients, provided client can exit facility
- To be free from unreasonable searches of personal belongings
  - To be reasonable, a search must be based on a reasonable suspicion of risk each time a search is conducted and child must be informed and present

## Group Home Personal Rights Education

- To attend school (cannot be required to attend facility school as a condition of admission)
- To participate in extracurricular, cultural and personal enrichment activities consistent with the child's age and developmental level
- To develop job skills at an age-appropriate level that is consistent with state law
- To attend Independent Living Program classes and activities if he or she meets age requirements
- At 16 years or older, to have access to existing information regarding available education options (vocational, postsecondary, financial aid)

## Group Home Personal Rights Restraints

- Some facilities are licensed to apply manual restraints, but:
- Facility must use a continuum of interventions, starting with the least restrictive intervention. Most restrictive interventions may be justified when less restrictive techniques have been attempted and were not effective and the child continues to present an imminent danger for injuring or endangering himself, herself or others
  - Continuum of intervention must include a plan by which staff works first to deescalate a situation using non-physical interventions first
  - When all other interventions have failed, and client is a danger to himself or others



## Group Home Rights Common Violations

## Group Home Personal Rights Common Violations

- Telephone use
  - Confidential: many facilities have phones only in common areas where other residents are allowed or staff office (staff must be present)
  - Confidential: monitoring without court order (eavesdropping)
  - Having/requiring an approved “call list”; CCL has sent a clarifying memo that all calls are allowed unless expressly prohibited by court
  - Restricting all calls during disciplinary measures, even those to family members, social workers, attorneys, probation officers, CASA’s, CCL, State Ombudsperson
  - Failing to give child phone messages (right to receive calls)
  - Excessive restriction on phone use as discipline (30 days)
  - Time limits of 10 minutes (CCL – 10 minutes unreasonable)
  - Charging for local calls or charging for calls to CASA/lawyer/probation

## Group Home Personal Rights Common Violations

- Visitation
  - Requiring “approved” visit lists
  - Requiring prior approval by social worker or facility staff of each visitor
  - Prohibiting unsupervised minors, including friends and family, from visiting
  - Prohibiting visits from child’s CASA or attorney
  - Visit “black out” periods to allow child to become acclimated

Exception: If facility staff 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 (murderous rampage exception)

## Group Home Personal Rights Common Violations

- Mail
  - Facility maintains a P.O. box for client mail that is not checked on a regular basis (delay in receiving mail)
  - Forbidding youth from sending or receiving unopened mail (court order required)
  - Opening mail as a search for contraband
  - Failing to have adequate resources (envelopes, paper, stamps)
  - Allowing social workers to monitor mail/requiring mail to go through a social worker without a court order



## Group Home Personal Rights Common Violations

- **Confiscating Personal Belongings**
  - Locking up children's personal belongings and prohibiting access upon intake into the facility
  - Requiring children to be on a certain level before having access to certain of their personal belongings
  - Removing belongings from child's room because the child has failed to keep her room clean
  - Keeping belongings from children for an excessive period of time when they are confiscated as part of a discipline program
  - Confiscating belongings for unrelated disciplinary purposes

Note: taking personal belongings as part of discipline is a narrow exception

Exceptions: facilities may take steps to safeguard children's belongings, with child's consent but child must have access upon request.

## Group Home Personal Rights Common Violations

- **Money and Allowances**
  - Failure to pay allowances
  - Allowances earned as part of level system (except \$ amount may be dictated by what level youth has earned)
  - Confiscating child's money upon intake or upon receipt and denying access (except that staff may help safeguard with child's consent)
  - Levying fines that are not accounted for or used for benefit of the child/other residents

## Group Home Personal Rights Common Violations

- Unreasonable searches
  - Blanket policies of searching residents upon return to the facility, and without reasonable suspicion that dangerous contraband/drugs/weapons are in resident's possession
  - Repeatedly searching the same resident upon return to the facility without an individualized reasonable suspicion each time
  - Random searches as part of facility's policies and procedures
  - Routine searches of a resident because they are "authorized by social worker" or social worker requests it
  - Requiring children returning to facility to present receipts for all items purchased, and if no receipt is provided, item is confiscated
  - Secret searches (youth must be notified and given opportunity to be present)

## Group Home Personal Rights Common Violations

- Clothing:
  - Failure to provide kids with adequate clothing on a reasonably regular basis (facility, not social services is responsible)
  - Providing kids with ill-fitting clothing
  - Failure to allow access to laundry facilities on a regular basis
- Food
  - Failure to have healthy food readily available
- Comfortable Home
  - Bedroom electrical outlets not functioning
  - Inadequate heat/ventilation
  - Excessive conflict/drama/harassment that is not properly managed by staff



### Group Home Personal Rights Common Violations

- Extracurricular and school sponsored activities
  - Social worker required to approve attendance at field trips
  - Children not allowed to participate in extracurricular activities due to staffing/transportation issues
  - Not allowing participation in community activities (e.g., youth soccer leagues)
  - Activities allowed only if youth pays for it herself

Note: any school or school-based extracurricular activity must be provided for free by the offering school district (science camp and other field trips, sports, clubs, etc.)

### Group Home Personal Rights Common Violations

- Failure to use a continuum of care
  - Low bar for instituting a physical restraint (non-assaultive yelling/threats to run)
  - Low bar for calling the police, which is considered an emergency measure

## Conclusions

- None of these rights can be denied “because the social worker” said (court order for most)
- At all times, facilities and staff must protect residents from imminent danger and they will not be cited for doing so, even if a right is denied to one or more residents
- Buzz words:
  - Reasonable restrictions
  - Imminent harm to person or property

## Conclusions

- Facility staff do not have the same ability to discipline and restrict children as do parents
- Blanket policies that restrict any of these rights are likely going to be problematic
- Policies that regulate these rights may work, so long as they are intended to ensure access for all, protect the facility and/or the safety and well-being of residents