

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2552

By: Ownbey

7 COMMITTEE SUBSTITUTE

8 An Act relating to foster children; providing rights
9 for children served by the Department of Human
Services' Child Welfare Services; listing rights
10 related to placement, safety, privacy, communication
and personal growth; requiring balanced approach to
11 protect conflicting rights; mandating statement of
rights be provided to child and foster parent;
12 allowing child to motion court for equitable relief
in certain circumstances; granting court discretion
to waive certain requirements; construing provision;
13 amending 10A O.S. 2011, Section 1-9-120, as amended
by Section 5, Chapter 257, O.S.L. 2014 (10A O.S.
14 Supp. 2017, Section 1-9-120), which relates to
grievance procedures; permitting child to file a
15 grievance with the Office of Client Advocacy;
directing Department to establish grievance
16 procedures for foster children in Department custody;
requiring resolution of disputes in specified manner;
17 providing for notification of grievance procedures
upon placement; mandating separate files for
18 grievances; prescribing access to grievance record
after completion; granting right to present grievance
19 without fear of reprisal; providing for discipline
when investigation finds retaliation or
20 discrimination against a foster child; construing
provisions; providing for codification; and providing
21 an effective date.

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24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-9-119.1 of Title 10A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. A child being served by Child Welfare Services of the
5 Department of Human Services is entitled to reasonable, good-faith
6 efforts in order to be provided the following rights when doing so
7 serves the child's best interest:

8 1. Placement:

9 a. to remain in the custody of the child's parents or
10 legal custodians unless and until there has been a
11 determination in accordance with state law that
12 removal is appropriate,

13 b. to be placed, in accordance with state law, when
14 circumstances permit and in the following order of
15 preference:

16 (1) with an approved relative,

17 (2) with an approved kinship placement,

18 (3) with an approved resource family who has
19 previously cared for the child, and

20 (4) with an approved resource family,

21 c. to be placed in the nearest geographic proximity to
22 the home of the child as possible,
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- d. to be placed with the child's sibling, when appropriate, if the sibling is also placed outside his or her home,
- e. to be placed, when appropriate, with a child of his or her own,
- f. to be placed, when possible, with a foster family that can and is willing to accommodate the child's communication needs,
- g. to be provided with both information about a foster family or program and, when circumstances permit, an opportunity to meet the foster parent or program staff before placement occurs,
- h. to be provided, when possible, an age-appropriate explanation why the child is in foster care and what is happening to the child and to the child's family, including siblings,
- i. to continue in the same school or educational placement with minimal disruption in order to receive an education that fits the child's age and individual needs,
- j. to be treated with dignity during placement changes.
 - (1) Except when a change in placement is due to an emergency, a child and the child's attorney shall

1 be afforded five (5) judicial days' notice before
2 a change in placement.

3 (2) Prior to any placement change, the impacted child
4 shall be consulted when appropriate and advised
5 in an age-appropriate manner of the circumstances
6 and the reason for the placement change. The
7 child's input concerning the placement change
8 shall be considered, taking the child's age and
9 developmental level into account, and

10 k. to receive reasonable equipment and assistance to
11 transport personal possessions during placement
12 changes;

13 2. Safety:

- 14 a. to live in a safe, healthy and comfortable home,
15 b. to have adequate and appropriate clothing,
16 c. to receive individualized medical, dental, vision,
17 mental health and other required services by, when
18 reasonably possible, a continuity of providers,
19 d. to be free of unnecessary or excessive medication, and
20 e. to report a potential violation of personal rights
21 without fear of punishment, interference, coercion or
22 other retaliation;

23 3. Privacy:
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- a. to have an age-appropriate expectation of privacy in accordance with existing law as to person, property and communications,
- b. to freely exercise the child's own religious beliefs, including the refusal to attend any religious activities and services, and
- c. to confidentiality of all juvenile court records consistent with existing law;

4. Communication:

- a. to have written visitation plans with parents and siblings in accordance with existing law,
- b. to begin visitation with parents and siblings in accordance with existing law,
- c. to have safe and reasonable communications, when appropriate and in accordance with existing law, with the child's parents, siblings, extended family and friends,
- d. to have regular and meaningful access to the child's attorney, guardian and court-appointed special advocate,
- e. to communicate, in private if necessary, with any court and judge with personal jurisdiction of the child. This shall include informing the court of inadequate representation being provided by any

- 1 attorney or other individual tasked with advocating on
2 behalf of the child,
- 3 f. to be provided the opportunity to engage in regular,
4 meaningful and private communication with the child's
5 assigned caseworker,
- 6 g. to participate, in a manner consistent with the
7 child's age and developmental level and in accordance
8 with existing law, in the development of and any
9 revision to the child's service plan,
- 10 h. to be presented, when appropriate and in accordance
11 with existing law, with the service plan for the
12 child's review and signature,
- 13 i. when appropriate, to be notified of, attend and have
14 the opportunity to be heard in court hearings relating
15 to the child's case and in family team meetings, and
- 16 j. to have, in accordance with existing law, all of the
17 child's records available for review by the child's
18 attorney and court-appointed special advocate if they
19 deem such review necessary; and

20 5. Personal Growth:

- 21 a. to have fair and equal access to all available
22 services, placement, care, treatment and benefits, and
23 to not be subjected to discrimination or harassment as
24 ensured by existing law,

- b. to engage in reasonable, age-appropriate day-to-day activities, including extracurricular, enrichment and social activities, consistent with the most family-like environment,
- c. to receive independent living and support services and, unless circumstances or existing law requires a document be obtained sooner, be provided identification and permanent documents, including birth certificate, Social Security card and health records by eighteen (18) years of age, to the extent allowed by federal and state law,
- d. the opportunity to work and develop job skills at an age-appropriate level that is consistent with state law, and
- e. to manage or have managed their personal earnings and financial resources in a manner consistent with the child's age and developmental level.

B. One or more of the enumerated rights in subsection A of this section may conflict. Therefore, a balanced approach to protect these rights shall be pursued that takes into account both the child's unique circumstances and what is in the child's best interest.

C. A statement of the rights enumerated in this section shall be provided to:

1 1. Each child at the outset of entering foster care and at
2 least annually thereafter; and

3 2. Any foster parent once a child in the custody of the
4 Department enters the foster parent's home and annually thereafter.

5 D. Subsequent to the exhaustion of available administrative
6 remedies as provided in Section 1-9-120 of Title 10A of the Oklahoma
7 Statutes, any child aggrieved by a violation of these rights may
8 seek intervention by a court with jurisdiction over the child to
9 make it aware of the grievance and obtain, if warranted, appropriate
10 equitable relief. The court in its discretion may waive the prior
11 exhaustion of administrative remedies. Nothing in this section,
12 however, shall be construed to create a private cause of action or
13 claim on the part of any individual, the Department, the Office of
14 Juvenile Affairs or any child-placing agency.

15 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-9-120, as
16 amended by Section 5, Chapter 257, O.S.L. 2014 (10A O.S. Supp. 2017,
17 Section 1-9-120), is amended to read as follows:

18 Section 1-9-120. A. The Office of Client Advocacy and child-
19 placing agencies shall each establish grievance procedures for
20 foster parents with whom the Department of Human Services or child-
21 placing agencies contract and for foster children in Department
22 custody. The Office of Client Advocacy shall work with the Office
23 of Juvenile System Oversight to track foster parent or foster child
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1 complaints through the grievance procedures and ensure a resolution
2 of the complaint.

3 B. The procedures established shall contain the following
4 minimum requirements:

5 1. Resolution of disputes with foster parents or foster
6 children shall be accomplished quickly, informally and at the lowest
7 possible level, but shall provide for access to impartial
8 arbitration by management level personnel within the central office;

9 2. Prompt resolution of grievances no more than sixty (60) days
10 after receipt of the grievance or complaint; and

11 3. Notification to all foster parents and foster children if
12 age-appropriate upon placement of a child about the grievance
13 procedures and how to file a complaint.

14 C. The Office of Client Advocacy and child-placing agency shall
15 designate one employee at the central office to receive and process
16 foster care grievances received by the Office of Juvenile System
17 Oversight.

18 D. The Office of Client Advocacy and child-placing agency shall
19 maintain records of each grievance filed as well as summary
20 information about the number, nature and outcome of all grievances
21 filed. The Office of Client Advocacy and the Office of Juvenile
22 System Oversight shall compile an annual report for the Oklahoma
23 Legislature that details the number of complaints received, the
24 number of complaints resolved, the nature of the complaints and any

1 other information requested by the Legislature. Agencies shall keep
2 records of grievances separate and apart from other foster parent or
3 foster child files. A foster parent ~~or a~~, former foster parent, or
4 a foster child or former foster child shall have a right of access
5 to the record of grievances such person filed after the procedure
6 has been completed.

7 E. 1. Each foster parent or foster child shall have the right,
8 without fear of reprisal or discrimination, to present grievances
9 with respect to the providing or receiving of foster care services.

10 2. The Department of Human Services shall promptly initiate a
11 plan of corrective discipline including, but not limited to,
12 dismissal of any Department employee or cancellation or nonrenewal
13 of the contract of a child-placing agency determined by the state
14 agency, through an investigation to have retaliated or discriminated
15 against a foster parent or foster child who has:

- 16 a. filed a grievance pursuant to the provisions of this
- 17 section,
- 18 b. provided information to any official or Department
- 19 employee, or
- 20 c. testified, assisted, or otherwise participated in an
- 21 investigation, proceeding or hearing against the
- 22 Department or the child-placing agency.

23 3. The provisions of this subsection shall not be construed to
24 include any complaint by the foster parent or foster child resulting

1 from an administrative, civil or criminal action taken by the
2 employee or child-placing agency for violations of law or rules, or
3 contract provisions by the foster parent.

4 SECTION 3. This act shall become effective November 1, 2018.

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