

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 83064, subsection (f)

Specific Purpose:

Subsection (f) is adopted to implement specific training requirements for individuals providing care and supervision regarding the safety of foster youth at school as specified in the applicable provisions of the California Student Safety and Violence Prevention Act of 2000.

Factual Basis:

This regulation is necessary to meet the “necessity” and “clarity” standard of the Administrative Procedure Act, Government Code sections 11349 (a) and (c), respectively. This regulation is necessary to implement Welfare and Institutions Code section 1529.2, which requires basic instruction on laws and procedures regarding the safety of foster youth at school and to ensure a harassment and violence free school environment as specified in the California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code). This regulation requires small family home caregivers to obtain training on what schools are doing to promote student safety and harassment and violence prevention.

Handbook is inserted following Section 83064, subsection (f)

Specific Purpose/Factual Basis:

The specific purpose/factual basis for providing this section in handbook is to reference applicable statutes that pertain to foster parent training provisions specified in Health and Safety Code section 1529.2 and Education Code section 32228, relative to the California Student Safety and Violence Prevention Act, for purposes of clarity and consistency. This is necessary to ensure that small family home caregivers have easy access to the actual text of these statutes.

Section 84001, subsection (r)(1)

Specific Purpose:

Subsection (r)(1) is adopted to insert the definition of the Reasonable and Prudent Parent Standard in Title 22, Division 6, Chapter 6 of the Group Home Regulations.

Factual Basis:

It is necessary to include the definition of the “Reasonable and Prudent Parent Standard,” for purposes of clarity and ease of use, because the “Reasonable and Prudent Parent Standard” is used throughout the regulations. This definition provides a concise and consistent meaning for providers and staff thereby avoiding confusion. This definition is derived from Welfare and Institutions Code sections 362.04, 362.05 and 727. Subsections (r)(1) and (2) have been renumbered for the purpose of clarity and ease of use.

Section 84067 and Title

Specific Purpose/Factual Basis:

A new section number and title is adopted to meet the “clarity” standard of the Administrative Procedure Act, Government Code section 11349(c) and to meet the requirement of style in Government Code section 11343.1.

Section 84067

Specific Purpose/Factual Basis

Adopting Section 84067 is necessary to be consistent with the provisions of AB 2096, Chaptered 2008, which amended Welfare and Institutions Code sections 362.05 and 727. Section 84067 subsection (a) is necessary to clarify that only group home administrators or facility managers, or his or her responsible designee, shall apply the “Reasonable and Prudent Parent Standard” when determining whether to allow a child in care to participate in extracurricular, enrichment and social activities.

Subsections (b), (b)(1), (2), and (3) are necessary to indicate specific factors that shall be considered by the administrator or facility manager, or his or her designee, to ensure the appropriateness of the activity, the health and safety, and best interest of the child. This regulation is also necessary to be consistent with the provisions of Welfare and Institutions Code sections 362.05 and 727.

Subsection (c) is necessary to ensure the rights of a child are not denied (as specified in Welfare and Institutions Code section 16001.9), that court orders are not violated, and specific needs and services for the child are maintained when the “Reasonable and Prudent Parent Standard” is applied.

Handbook is inserted following Section 84067, subsection (b)(3)

Specific Purpose/Factual Basis:

The handbook section is necessary to provide useful information to providers regarding the intent of the “Reasonable and Prudent Parent Standard,” the importance of proper documentation, as well as provide relevant code sections that providers can reference. The

handbook section lists other group home regulations sections where the “Reasonable and Prudent Parent Standard” is applied.

Section 84076, subsections (c)(5), (c)(5)(A),(B) and (C)

Specific Purpose:

The purpose of this amendment is to allow a group home child access to kitchen appliances and utensils when participating in food preparation, table setting, or other related kitchen and dining activities. Subsection (A) requires providers to use the “Reasonable and Prudent Parent Standard” when determining whether to allow a child to use kitchen appliances and utensils. Subsection (B) requires that the child be trained on the appropriate use of kitchen appliances and utensils. Subsection (C) is necessary as it clarifies that specified group home staff shall not require a child in care to participate in activities such as meal preparation.

Factual Basis:

Subsection (c)(5) is necessary for consistency with provisions as specified in Welfare and Institutions Code section 361.2(j)(2). This subsection requires the “Reasonable and Prudent Parent Standard” to be applied by specified staff in a group home to allow appropriate day to day activities that would meet the needs of the children such as the use of kitchen appliances and utensils.

Subsection (c)(5)(A) is necessary to ensure specified Group Home staff apply the "Reasonable and Prudent Parent Standard" when determining whether to allow a child to have access to kitchen appliances and utensils.

Subsection (c)(5)(B) is necessary to ensure that the child is trained on the safe use of kitchen appliances and utensils for purposes of the health and safety of a child in care.

Subsection (c)(5)(C) ensures that meal preparation is not a mandatory activity for a child in care, and that the child’s rights are not denied as specified in Welfare and Institutions Code section 16001.9.

Allowing a child in group home care accessibility to kitchen appliances and utensils for the purpose of growth and enrichment is necessary to promote a sense of normalcy for the child.

Section 84079, subsection (c)

Specific Purpose:

Subsection (c) is amended to clarify who will apply the “Reasonable and Prudent Parent Standard,” and to allow group home children to participate in planned extracurricular, enrichment and social activities.

Factual Basis:

Amending subsection (c) is necessary to be consistent with the provisions specified in Welfare and Institutions Code sections 361.2.(j)(2), 362.04, and 727. The amendments are necessary to authorize designated group home staff to apply the “Reasonable and Prudent Parent Standard,” and to allow group home children to participate in planned extracurricular, enrichment and social activities that are age-appropriate and developmentally-appropriate.

It is necessary to repeal language in section 84079 (“licensee” and “community activities including but not limited to the following:”) because it is redundant and unclear. Subsection (c)(1) and (2) are amended to require that the “Reasonable and Prudent Parent Standard” be applied, by the administrator or facility manager, or his or her designee, when allowing a child to participate in planned activities. Subsection (c)(3) is repealed and placed in handbook following Section 84079, subsection (c)(2). The original language in subsection (c)(1),(2), and (3) is not regulatory and should be used as a guide relating to the type of activities that a child may participate. This language is more appropriate in handbook.

Handbook is inserted following Section 84079, subsection (c)(2)

Specific Purpose/Factual Basis

This handbook section is inserted to provide examples of extracurricular, enrichment and social activities. This list is not exhaustive.

Section 84087.2, subsections (a)(5), and (a)(5)(A)

Specific Purpose:

These subsections require the group home administrator or facility manager, or his or her designee, to apply the “Reasonable and Prudent Standard” and specifies safeguards that group home staff must employ when allowing a child access to certain types of bodies of water.

Factual Basis:

Subsections (a)(5) is necessary to implement Welfare and Institutions Code sections 361.2 and 727 that allow a group home administrator or facility manager, or their designee, to apply the “Reasonable and Prudent Parent Standard” to day-to-day activities of a child in care. This regulation requires group home staff to apply the “Reasonable and Prudent Parent Standard” when deciding when to allow a child access to fish ponds, fountains and similar bodies of water. Allowing a child access to fish ponds, fountains and similar bodies of water for the purpose of growth and enrichment is necessary to provide children in care a sense of normalcy.

Subsection (a)(5)(A) is necessary to ensure the health and safety of a child around potentially dangerous bodies of water.

Section 84088 subsections (d), and (d) (1) and (2)

Specific Purpose:

Section 84088 is amended to require the group home administrator or facility manager, or his or her designee, apply the “Reasonable and Prudent Parent Standard” when determining whether to allow a child access to disinfectants and cleaning solutions. This section requires that a child be properly trained on the safe use of disinfectants and cleaning solutions.

Factual Basis:

Section 84088 is amended to implement the provisions of AB 2096, Chapter 483, Statutes of 2008, which amended Welfare and Institutions Code sections 362.05 and 727. Subsection (d) specifies which designated staff shall apply the “Reasonable and Prudent Parent Standard” when allowing a child in a group home access to disinfectants and cleaning solutions.

It is necessary to adopt section 84088 (d)(1) to require designated group home staff to apply the “Reasonable and Prudent Parent Standard” when allowing a child in a group home access to disinfectants and cleaning solutions. The use of disinfectants and cleaning solutions allows a child to participate in home cleaning activities which prepare them for adulthood.

It is necessary to adopt section 84088 (d)(2) to ensure the health and safety of the child by requiring group home staff to provide training on how to safely use disinfectants and cleaning solutions.

Re-lettering subsections (e) through (i) is necessary for clarity.

Section 84090, subsection (h)(1)(H)

Specific Purpose/Factual Basis:

The total hours of instruction for this section are lessened by one (1) hour [from the current six (6), to five (5)], in order to establish one (1) hour of instruction under section 84090(h)(1)(J). This amendment is consistent with satisfying the requirement of the initial Certification Training Program consisting of forty (40) classroom hours on the Uniform Core of Knowledge.

Section 84090, subsection (h)(1)(J)

Specific Purpose:

Subsection (h)(1)(J) is adopted to implement specific training requirements for caregivers on the existing laws and procedures regarding the safety of foster youth at school, and the ensuring of a harassment and violence free school environment, as specified in the applicable provisions of the California Student Safety and Violence Prevention Act of 2000.

Factual Basis:

This regulation is necessary to meet the “necessary” and “clarity” standard of the Administrative Procedure Act, Government Code section 11349 (a) and (c), respectively. This regulation is necessary for consistency with Welfare and Institutions Code section 1522.41 which provides for basic instruction on foster youth safety laws and procedures as contained in the California Student Safety and Violence Prevention Act of 2000. This one (1) hour requirement is needed to provide group home administrators with the knowledge of what schools are doing to ensure foster youth safety at school and the ensuring of a harassment and violence free school environment.

Handbook is inserted following Section 84090, subsection (h)(1)(J)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of referencing this section in handbook is to cite the relevant foster parent training provisions required by Health and Safety Code section 1522.41 for the purpose of clarity. Education Code section 32228 is included in handbook as it is referenced in section 1522.41. This is necessary to ensure that group home administrators have easy access to the actual text of these statutes.

Section 86065, subsection (a)(7)

Specific Purpose:

Subsection (a)(7) is adopted to implement specific training requirements for Transitional Housing Placement Program personnel on existing laws and procedures regarding the safety of foster youth at school and to ensure a harassment and violence free school environment as specified in the applicable provisions of the California Student Safety and Violence Prevention Act of 2000.

Factual Basis:

Subsection (a)(7) is “necessary” to ensure the health and safety of children in the Transitional Housing Placement Program. Health & Safety Code section 1530 permits the Department to effect “reasonable rules and regulations.” The Department has determined that this training should also apply to Transitional Housing Placement Program personnel because it will benefit a child in care.

This subsection is further needed to provide Transitional Housing Placement Program personnel with information as to what schools are doing to ensure foster youth safety at school and the ensuring of a harassment and violence free school environment.

Handbook is inserted following Section 86065 subsection (a)(7)

Specific Purpose/Factual Basis:

The specific purpose/factual basis of providing this section to handbook is to reference applicable statutes that pertain to the California Student Safety and Violence Prevention Act of 2000. This is necessary to ensure that Transitional Housing Placement Program personnel have easy access to the actual text of these statutes.

Section 88065, subsection (a)(6)

Specific Purpose:

Subsection (a)(6) is adopted to implement specific training requirements for foster family agency personnel on existing laws and procedures regarding the safety of foster youth at school and to ensure a harassment and violence free school environment as specified in the applicable provisions of the California Student Safety and Violence Prevention Act of 2000.

Factual Basis:

Subsection (a)(6) meets the “necessary” and “clarity” standard of the Administrative Procedure Act, Government Code sections 11349 (a) and (c), respectively. This regulation is necessary for consistency with Welfare and Institutions Code section 1529.2 which provides for basic instruction on existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment free school environment as specified in the California Student Safety and Violence Prevention Act of 2000. This regulation is needed to provide foster family agency personnel with the knowledge of what schools are doing to promote student safety and prevent harassment and violence. Subsection (a)(7) through (11) have also been renumbered for the purpose of clarity.

Handbook is inserted following Section 88065

Specific Purpose/Factual Basis:

The specific purpose/factual basis of providing this handbook section is to cite Education Code section 3228 relative to the California Student Safety and Violence Prevention Act of 2000 for the purpose of clarity.

Section 89405 subsection(a)(1)(J)

Specific Purpose:

Subsection (a)(1)(J) is adopted to implement specific training requirements for foster family home caregivers on existing laws and procedures regarding the safety of foster youth at school and ensuring of a harassment and violence free school environment as specified in the applicable provisions of the California Student Safety and Violence Prevention Act of 2000.

Factual Basis:

Subsection (a)(1)(J) meets the “necessary” and “clarity” standard of the Administrative Procedure Act, Government Code sections 11349 (a) and (c), respectively. This regulation is necessary for consistency Welfare and Institutions Code section 1529.2, which provides for basic instruction on the foster youth safety laws and procedures contained in the California Student Safety and Violence Prevention Act of 2000. This regulation is necessary to provide foster family home caregivers with the knowledge of what schools are doing to promote student safety at school and to ensure a harassment and violence free school environment.

Handbook is inserted following Section 89405

Specific Purpose/Factual Basis:

The specific purpose/factual basis of providing this section to handbook is to reference the applicable foster parent training provisions as contained in Health and Safety Code section 1529.2 and Welfare and Institutions Code section 16003. Education Code section 32228 is included in handbook as it is referenced in Health and Safety Code section 1529.2 and Welfare and Institutions Code section 16003.

b) Identification of Documents Upon Which Department Is Relying

- (1) Assembly Bill (AB) 3015, Chapter 557, Statutes of 2008, amended Health and Safety Code sections 1522.41 and 1529.2, and Welfare and Institutions Code section 16003.
- (2) Assembly Bill (AB) 2096, Chapter 483, Statutes of 2008, amended Welfare and Institutions Code sections 362.05 and 727.
- (3) California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of the Education Code).

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS has made an initial determination that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact on Business

CDSS has determined that the proposed regulations will affect Group Homes (GHs) which the state considers small businesses. Children's residential program regulations will be amended to implement statutes pursuant to the applicable provisions of Assembly Bill (AB) 2096, Chapter 483, Statutes of 2008, and AB 3015, Chapter 557, Statutes of 2008.

These regulations do not have an adverse economic impact on small businesses.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on May 12, 2010, in Sacramento, California. The following written testimony was received from the Children's Advocacy Institute (University of San Diego, 5998 Acala Park, San Diego, CA 92110) during the 45-day comment period from March 26, 2010, to 5:00 p.m. May 12, 2010:

Comment

The Children's Advocacy Institute (CAI), founded in 1989 as part of the University of San Diego School of Law, seeks to improve the health, safety, and well-being of children. CAI is an academic center and statewide advocacy group representing the interests of California's children. Based at the University of San Diego, CAI has trained law students in the practice of child advocacy for the last 20 years. CAI is particularly familiar with California's foster child population. We have operated a clinic representing abused or neglected children before the court for the last fifteen years. For the last three years, we have operated the state's major training program teaching attorneys (those representing children, parents and the state) who are new to dependency court practice. Professor Fellmeth of CAI is the author of *Child Rights and Remedies* (Clarity Press, 2006) and is one of the nation's leading child advocates, now serving as Chair of the National Association of Counsel for Children. Before taking my current position as CAI Senior Staff Attorney, I represented children in dependency court in Los Angeles County for four years, and I currently assist law students participating in our clinical programs in their representation of children in San Diego County's dependency court.

Currently, group home regulations lack direction for the administrator of facility manager and his or her responsible designee as it relates to allowing children in care to participate in extracurricular, enrichment, and social activities. We appreciate the goal of the proposed regulations to clarify and create standards for these individuals in regard to applying a "Reasonable and Prudent Parent Standard." Unfortunately, the proposed regulations, as currently drafted, have two key flaws.

Lack of Appropriate Balance

First, the "Reasonable and Prudent Parent Standard" as currently defined in draft regulation 84001 (r)(1) does not reach the appropriate balance between the child's health and safety and supporting the child's emotional and developmental growth. This balance is further lacking in the application of the "Reasonable and Prudent Parent Standard" as specified in proposed regulation 84067.

As currently drafted, the regulations weigh heavily on the need to make sure the child is able to be safe while participating in any activity. While this is obviously a very necessary and important goal in both raising a child and in the application of the "Reasonable and Prudent Parent Standard", the proposed regulations neglect the important role parents (including group home administrators or facility managers or his or her responsible designees) have in pushing their children to grow both emotionally, developmentally, and in their capacity to participate in life's activities. Too often, we at CAI have seen youth aging out of the foster care system without appropriate life skills because the need to "protect" the child was considered but the need to balance that protection with the opportunity to teach life skills was neglected. To appropriately find this balance in the proposed regulatory package, CAI proposes the following amendments:

Regulation 84001 (r)(1) be amended to read:

"Reasonable and Prudent Parent Standard" means the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interest while at the same time encouraging the child's emotional and developmental growth, that an administrator or facility manager, or his or her responsible designee, shall use when determining whether to allow a child in care to participate in extracurricular, enrichment and social activities. The administrator or facility manager, or his or her responsible designee, should strive to provide the child with the most family-like living experience possible when applying the "Reasonable and Prudent Parent Standard".

The following subdivisions should be added to the list of consideration that must be taken into account when applying the "Reasonable and Prudent Parent Standard" in *Regulation 84067 (b)*:

(4) The importance of encouraging the child's emotional and developmental growth.

(5) The importance of providing the child with the most family-like living experience possible.

Inappropriate Barriers

Even more concerning are the barriers that are included in the proposed regulatory package. These barriers contradict the express requirements of Welfare and Institutions Code section 362.05. As correctly stated in the proposed regulatory package, Welfare and Institutions Code section 362.05 provides:

"(a) Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state or local regulation or policy may prevent, or create barriers to, participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities."

Contra to the legislative intent, and indeed the express language of this code section, the proposed Handbook included as part of Regulation 84067 appears to create just such a barrier by encouraging the administrator or facility manager, or his or her responsible designee "to document the type of activity and steps taken to ensure the appropriateness of the activity." The handbook goes on to indicate that this documentation "provides evidence that the staff took the necessary precaution to make informed, reasonable, and prudent decisions that ensures the health and safety of the child." The way this regulation is currently drafted, it appears this documentation is encouraged only when the child participates in a given activity.

While CAI understands the need to ensure all safety precautions are taken, this documentation "encouragement" creates exactly one of the barriers contemplated by Welfare and Institutions Code section 362.05. Of note, documentation (and thus a barrier) appears required *only if* the child participates in an activity, not if the child is precluded from such participation.

To eliminate this barrier, CAI recommends eliminating the language quoted above from the handbook. If this language is deemed necessary, for liability or other purposes, CAI recommends inserting language which requires similar documentation when a child is *not* allowed to participate in extracurricular, enrichment and social activities, when such participating is requested by the child. By requiring documentation of both the participation decisions and the denial of participation decisions, the documentation is more balanced and does not provide as great a barrier to participation.

Response

Thank you for your comments on the proposed regulations. The Department supports CAI's position to improve the health and safety and well-being of children.

The Department also supports CAI's suggestion of reaching the appropriate balance between the child's health and safety and supporting the child's emotional and developmental growth, as well as providing children in foster care with the most family-like living experience.

However amending the Sections 84001 and 84067 relating to the Reasonable and Prudent Parent standard (RPPS) is unnecessary as the proposed changes are already inherent in the concept of RPPS and does not need to be expressly stated in regulation. Allowing a child to participate in extracurricular, enrichment and social activities will foster a homelike environment, promote emotional and developmental growth, as well as help prepare the foster child for aging out of the system by teaching life skills. The RPPS piece in the proposed regulation package will generate that needed balance between the health and safety and supporting the child's emotional and developmental growth.

In this effort, the Department has amended various sections of the regulations to apply the RPPS standard. For example:

- Food Service section 84076 will allow a child access to kitchen appliances and utensils when participating in extracurricular activities such as learning how to prepare a meal, or how to set a table.
- Planned Activities section 84079 will allow a child to participate in sleepovers with friends, or be involved with school activities such as the debate team, sporting events, drama, etc.
- Section 84088 that will allow a child to have access to disinfectants and cleaning solutions to teach children with appropriate life skills.

84067 (handbook section)

Thank you for your comment on the proposed Handbook section. It is necessary for the Department to clarify that “Handbook” is not a requirement and is not a regulation. Handbook is simply a recommendation, therefore it is not a barrier and further language is not necessary.

Finally, considering the above comment, CDSS intends the regulations as proposed to remain unchanged.

g) No Changes to Regulations

A 15-day renotece was not required since there were no substantive changes made to the regulations following the public hearing.