

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



December 30, 2005

ALL COUNTY LETTER NO. 05-39

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order
 Clarification Requested by
One or More Counties
 Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHIEF PROBATION OFFICERS
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY LICENSING PROGRAM MANAGERS

SUBJECT: EXTRACURRICULAR, ENRICHMENT, AND SOCIAL ACTIVITIES
FOR FOSTER CHILDREN

REFERENCE: WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 362.04
AND 362.05, ASSEMBLY BILL (AB) 408 (CHAPTER 813, STATUTES
OF 2003), AND SENATE BILL (SB) 358 (CHAPTER 628, STATUTES
OF 2005)

The purpose of this All County Letter (ACL) is to provide information and guidance regarding recent changes to State law which entitles foster children to participate in age-appropriate, extracurricular, enrichment, and social activities. In 2003, AB 408 enacted provisions of W&IC Section 362.05 which provides that:

- Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities.
- Caregivers use a prudent parent standard in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities.
- Caregivers take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.
- Any state or local regulation or policy that prevents or creates barriers to participation in those activities is prohibited.
- Each state and local entity is required to ensure that private agencies providing 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.

The recent passage of SB 358 amended W&IC Section 362.05 to add the term “reasonable” to the prudent parent standard and requires the caregiver to use a **reasonable and prudent parent standard**, as defined in W&IC Section 362.04, in addition to the other existing provisions of W&IC Section 362.05. The definition is as follows:

- *“Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the child’s health, safety, and best interests.*

Every day parents make important decisions about their child’s activities. Foster parents are faced with making the same decisions for a foster child in their care. However, when a foster parent makes decisions, the foster parent also must consider applicable licensing and approval laws and regulations to ensure the health and safety of a child in care. The California Department of Social Services (CDSS) understands that pertinent regulations have previously been interpreted to prohibit foster youth from participating in extracurricular activities. The W&IC Section 362.05 now empowers a foster parent to approve or disapprove a foster child’s participation in activities based on the foster parent’s own assessment using a reasonable and prudent parent standard, without prior approval of the social worker, licensing or approval agency, or the Juvenile court.

In enacting this law, the Legislature recognized the importance of making every effort to normalize the lives of foster children. Typical childhood activities in which foster children have been denied participation in the past have included, for school-sponsored field trips or sports, sleep-over with friends, scouting, and 4-H. Frequently, a foster parent has been reluctant to sign a permission slip for a foster child when this should not be the case. Participation in these types of activities is important to the child’s well-being, not only emotionally, but in developing valuable life-coping skills.

In applying the reasonable and prudent-parent standard, a foster parent is required to take “reasonable steps” to determine the appropriateness of the activity in consideration of the child’s age, maturity, and developmental level. It is recognized that there are many different approaches to determine whether an activity is appropriate for a child in care. Although not all-inclusive, the following examples of “reasonable steps” that a foster parent may take in making this determination are provided:

- Have adequate information about the child so informed decisions can be made. For example, a foster parent can make an effort to be aware of anything in the foster child's history, case plan, and any orders issued by the court that may suggest that a particular activity would not be appropriate for the child. If the foster parent is not aware of the child's history or if the child's case plan does not offer insight on whether the proposed activity would be appropriate, the foster parent should consult with the child's social worker.
- Take into account the type of activity and consider the child's mental and physical health, and behavioral propensities.
- Consider where the activity will be held, with whom the child will be going, and when the child will return.
- Ask the question: is this an age-appropriate extracurricular, enrichment or social activity for the foster child?
- Take into account any reasonably foreseeable risk of an activity and what safety factors and direct supervision may be involved in the activity in order to prevent potential harm to the child (i.e., hunting, paint ball, archery or similar activities that may pose a higher risk).

When investigating a complaint regarding a caregiver's compliance with W&IC Section 362.05, the licensing or approval agency should consider whether the foster parent has taken these or similar reasonable steps in determining the appropriateness of the activity in consideration of the child's age, maturity and developmental level.

It should be noted that W&IC Section 362.05 only applies to a foster child's participation in age-appropriate extracurricular, enrichment, and social activities. Any person having unsupervised contact with a foster child not within the parameters of W&IC Section 362.05 must comply with existing criminal background clearance requirements specified in Health and Safety Code Section 1522 and W&IC Section 309(d) and 361.4, as applicable.

County licensing and approval staff should provide information about using the reasonable and prudent parent standard and a foster child's participation in extracurricular, enrichment and social activities as a part of any orientation and training for new caregivers. Attached is an "Information Sheet" that counties may use to orient new caregivers to the reasonable and prudent parent standard when deciding on a foster child's participation in extracurricular, enrichment or social activities. Established caregivers should also be informed as soon as possible in a manner conducive to efficient and timely county business practices.

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The CDSS is in the process of promulgating regulations to implement the provisions of W&IC Section 362.05. For questions on this subject related to licensed caregivers, please contact Vincent Herrera, Manager, Children's Residential Policy Unit, at (916) 324-4312. For questions concerning this subject for approved relative/nonrelative extended family member caregivers, please contact Carole Minchew, Program Analyst, Kinship Policy and Support Unit, at (916) 657-1858.

Sincerely,

JO FREDERICK, Deputy Director
Community Care Licensing Division

MARY L. AULT, Deputy Director
Children & Family Services Division

Attachment

CAREGIVER INFORMATION SHEET

EXTRACURRICULAR, ENRICHMENT AND SOCIAL ACTIVITIES, AND THE REASONABLE AND PRUDENT PARENT STANDARD

This Information Sheet is intended to give you information regarding current law which entitles foster children to participate in age-appropriate, extracurricular, enrichment, and social activities.

Current law contained in Section 362.05 of the Welfare and Institutions Code (W&IC) provides that:

- Every child adjudged a dependent child of the juvenile court (a foster child) shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities.
- Caregivers must use a “prudent parent standard” in determining whether to give permission for a foster child to participate in extracurricular, enrichment, and social activities.
- Caregivers must take reasonable steps to determine the appropriateness of the activity in consideration of the child’s age, maturity, and developmental level.
- Any state or local regulation or policy which prevents or creates barriers to participation in those activities is prohibited.
- Each state and local entity is required to ensure that private agencies providing services to foster children have policies consistent with this section and that those agencies promote and protect the ability of foster children to participate in age-appropriate extracurricular, enrichment, and social activities.

New law added the term “reasonable” to expand the meaning of the current prudent parent standard. Effective January 1, 2006, caregivers are required to use the new **reasonable and prudent parent standard**, which is defined as follows:

- *“Reasonable and prudent parent” standard means the standard characterized by careful and sensible parental decisions that maintain the child’s health, safety, and best interests.*

Every day, parents make important decisions about their children’s activities. Foster parents are faced with making the same decisions for the foster children in their care. However, when foster parents make decisions they also must consider licensing or approval laws and regulations to ensure the health and safety of foster children in care.

The California Department of Social Services understands that state law and regulations have previously prohibited youth from participating in extracurricular activities unless certain requirements were met. Now, however, W&IC Section 362.05 empowers foster parents to approve or disapprove activities based on their own assessment using a “reasonable and

prudent parent standard” without prior approval of the child’s social worker, the licensing or approval agency, or the juvenile court.

In enacting this law, the Legislature recognized the importance of making every effort to normalize the lives of foster children. Typical childhood activities in which foster children have been denied participation in the past include, for example, school-sponsored field trips or sports, sleep-over with friends, scouting, and 4-H activities. Frequently, foster parents are reluctant to sign permission slips for foster children, when this should not be the case. Participation in these types of activities is important to the child’s wellbeing, not only emotionally, but in developing valuable life-coping skills.

In applying the “reasonable and prudent parent standard,” foster parents are required to take “reasonable steps” to determine the appropriateness of the activity in consideration of the child’s age, maturity, and developmental level. It is recognized that there are many different ways to determine whether an activity is appropriate for a foster child in your care. Therefore, the following examples of “reasonable steps” that a foster parent may take in making this determination is provided as a guide to assist you in your decision-making process

- Have adequate information about the foster child in your care so you can make informed decisions. For example, make an effort to be aware of anything in the foster child’s history or case plan, and of any orders issued by the juvenile court that may suggest that a particular activity would not be appropriate for the foster child. If you are not aware of the child’s history or if the case plan is silent on whether the proposed activity would be appropriate, you are encouraged to consult with the child’s social worker.
- Take into account the type of activity and consider the foster child’s mental and physical health, and behavioral propensities.
- Consider where the activity will be held, with whom the foster child will be going, and when they will return.
- Consider all the information you have gathered and ask the question: is this an age-appropriate extracurricular, enrichment or social activity?
- Take into account the reasonably foreseeable risks of an activity and what safety factors and direct supervision may be involved in the activity in order to prevent potential harm to the foster child. (i.e., hunting, paint ball, archery or similar activities that may pose a higher risk).

This law only applies to participation in age-appropriate extracurricular, enrichment, and social activities. This law does not apply, for example, to unsupervised time at home. Any person having contact with a foster child for purposes other than those associated with a foster child’s participation in age-appropriate, extracurricular, enrichment and social activities must comply with existing criminal background check requirements specified in Health and Safety Code Section 1522 and W&IC Sections 39(d) and 361.4, as applicable.