

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 678. OFFICE OF CLIENT ADVOCACY**

**SUBCHAPTER 1. ADMINISTRATION**

**310:678-1-1. Purpose**

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Rules relating to:

- (1) investigations conducted by OCA are found in ~~Oklahoma Administrative Code (OAC) 340:2-3-32 through 340:2-3-38~~ Subchapter 3;
- (2) grievance systems maintained by OCA are found in ~~OAC 340:2-3-45 through 340:2-3-55~~ Subchapter 5;
- (3) the Grievance and Abuse Review Committee (GARC) are found in ~~OAC 340:2-3-61 through 340:2-3-65~~ Subchapter 7; and
- (4) OCA Advocacy Programs are found in ~~OAC 340:2-3-71 through 340:2-3-75~~ Subchapter 9.

**310:678-1-2. Definitions**

The following words and terms when used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

**"Abuse"** means, with regard to:

- (A) children, per Section 1-1-105 of the Oklahoma Statutes (10A O.S. § 1-1-105) harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's (PRFC) health, safety, or welfare (PRFC) including, but not limited to: non-accidental physical or mental injury, sexual abuse, or sexual exploitation.
- (B) vulnerable adults, per 43A O.S. § 10-103, causing or permitting:
  - (i) the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, mental anguish, or personal degradation; or
  - (ii) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

**"Administrative information"** means information reported to or obtained by Oklahoma Human Services (OKDHS) regarding the community services provider during the investigative process that may be appropriate for internal administrative action but does not have the potential to impact the immediate health, safety, or welfare of recipients of community services, has not been verified as true and is for informational purposes only, per 56 O.S. § 1025.1.

**"Administrator" or "administrator's designee"** means, with regard to:

- (A) children in Oklahoma Department of Human Services (OKDHS) custody living in a private, residential facility: the facility's chief administrative officer;
- (B) children in OKDHS custody living in an OKDHS-operated shelter or group home, the shelter or group home director;
- (C) children in OKDHS custody living in any other setting, including any type of out-of-home placement: the applicable OKDHS district director;
- (D) foster care parents: the applicable OKDHS district director or deputy director;
- (E) children in residential care facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS); facilities that contract with, or are licensed by, the Oklahoma Office of Juvenile Affairs (OJA), with the exception of OJA-operated secure facilities, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS); and the J.D. McCarty Center or OKDHS and other residential care facilities: the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;
- (F) day treatment programs: the person charged with responsibility for program administration;

(G) adults and children who are in OKDHS Developmental Disabilities Services (DDS) specialized foster care and DDS specialized foster care parents: the applicable DDS area manager;

(H) Robert M. Greer Center (Greer) residents: the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community: the provider's chief executive officer; and

(J) residents of group homes for persons with developmental disabilities: the group home director.

**"Advocate"** means an ~~Office of Client Advocacy (OCA)~~ employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve their problems, helping protect their rights, and seeking to improve the quality of their lives and care.

**"Age-appropriate"** or **"developmentally-appropriate"** means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child per 10A O.S. § 1-1-105.

**"Agency companion"** means a person who provides agency companion services, per OAC 317:40-5-3, to:

(A) members 18 years of age or older who are eligible for services through Community or Homeward Bound waivers, or

(B) persons under 18 years of age, with approval from the OKDHS ~~Developmental Disability Services (DDS)~~ director or designee.

**"Area manager"** means an administrator of one of the three service delivery areas designated by OKDHS DDS.

**"Areas of Concern"** or **"(AOC)"** means:

(A) with regard to children: issues that do not rise to the level of abuse or neglect, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices. AOCs are brought to the provider's attention or informational purposes or for appropriate corrective action, when applicable; and

(B) with regard to individuals served by a community services worker, issues that do not rise to the level of a substantiated finding, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices by the community services provider, which has the potential to impact the health, safety, or welfare of recipients of community-based services, and ~~OKDHS OCA~~ has conducted sufficient inquiry into the issue to meet the probable cause investigative standard, per 56 O.S. § 1025.1.

**"Behavioral health"** means mental health, substance abuse, or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance abuse treatment, per 10A O.S. § 1-1-105.

**"Caretaker"** means, per 43A O.S. §10-103, a person who has:

(A) the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(B) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(C) was appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.

**"Caretaker misconduct"** means, per 10A O.S. § 1-9-112, an act or omission by a PRFC that does not rise to the level of abuse, neglect, sexual abuse, or sexual exploitation with regard to any child or resident:

- (A) residing outside their own homes other than children in foster care or children in the custody of OJA and placed in an OJA secure facility;
- (B) in a day treatment program as defined in 10 O.S. § 175.20;
- (C) receiving services from a community services worker as that term is defined in 56 O.S. § 1025.1; and
- (D) residing in a state institution listed in 10 O.S. § 1406.

**"Child"** means any unmarried person younger than 18 years of age.

**"Child-placing agency"** means an agency that arranges for, or places a child in, a foster family home, family-style living program, group home, adoptive home, or a successful adulthood program per 10A O.S. § 1-1-105.

**"Child with a disability"** means any child who has a physical or mental impairment that substantially limits one or more of the major life activities of the child or who is regarded as having such impairment by a competent medical professional, per 10A O.S. § 1-1-105.

**"Client"** means, with regard to OCA:

- (A) investigative services: individuals listed in Oklahoma Administrative Code (OAC) 340:2-3-32(a)(2) 310:678-3-1(a)(2);
- (B) grievance services: individuals listed in OAC ~~340:2-3-45(a)(2)~~ 310:678-5-1(a)(2); and
- (C) advocacy program: individuals listed in OAC ~~340:2-3-71(b)~~ 310:678-9-1(b).

**"Community services provider"** means a community-based program, corporation, or individual who contracts with, or is licensed or funded by, OKDHS to provide residential or vocational services to persons who are elderly or persons with intellectual or developmental disabilities, or contracts with the Oklahoma Health Care Authority (OHCA) to provide services to individuals with intellectual disabilities through a Home and Community-Based Waiver, except a private Intermediate Care Facility for Individuals with Intellectual Disabilities, per 56 O.S. § 1025.1.

**"Community services worker"** or **"(CSW)"** means any person employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to persons who are elderly or persons with developmental disabilities and who is not a licensed health professional or any person who contracts with the OHCA to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities, per 56 O.S. § 1025.1.

**"Community Services Worker Registry"** or **"(CSW Registry)"** means the Registry established by OKDHS per 56 O.S. § 1025.3.

**"Complaint"** means a report communicating a grievance, concern, or perceived harm, submitted by phone, email, or in writing by a foster parent or a child being served by Child Welfare Services (CWS) to the Oklahoma Commission of Children and Youth (OCCY) Office of Juvenile System Oversight (OJSO). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.

**"Custodian"** means, per 10A O.S. § 1-1-105, an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child has been awarded by the court. The term "custodian" shall not mean OKDHS.

**"Day treatment program"** means non-residential, partial hospitalization programs, day treatment programs, and day hospital programs in which children and adolescents are placed for psychiatric or psychological treatment, per 10 O.S. §175.20.

**"Disposition"** means, with regard to OCA intake processes, the OCA intake unit action taken in response to a referral received, per OAC ~~340:2-3-35~~310:678-3-4.

**"Educational employee"** means a school district employee, who provides contractual educational services on-site at a facility, who is either a witness or the alleged perpetrator in an OCA investigation.

**"Exploitation" or "exploit"** with regard to vulnerable adults means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense, per 43A O.S. § 10-103.

**"Failure to protect"** means, per 10A O.S. § 1-1-105, failure to take reasonable action to remedy or prevent child abuse or neglect, and includes the conduct of a non-abusing parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the child abuse or neglect or otherwise take reasonable action to end the abuse or neglect.

**"Financial neglect"** means, with regard to vulnerable adults, per 43A O.S. § 10-103, repeated instances by a caretaker or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

- (A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
- (B) refusing to pay for necessities or utilities in a timely manner; or
- (C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

**"Force"** means, as used by an alleged perpetrator with regard to a child residing outside of his or her home, other than in foster care:

- (A) "authorized use of physical force" means using physical contact to control or contain a child when the alleged perpetrator reasonably considers the child to:
  - (i) pose a risk of inflicting harm to himself or herself or others; or
  - (ii) be in the process of leaving a facility without authorization; and
  - (iii) when physical force is authorized, the least force necessary under the circumstances is employed;
- (B) "excessive use of force" means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:
  - (i) grounds for belief that force was necessary;
  - (ii) ages, genders, and strengths of the parties involved;
  - (iii) nature of the force employed;
  - (iv) alternative means of force or control available;
  - (v) extent of the inflicted harm; and
  - (vi) provider's established method(s) of restraint and intervention for the child against whom the force was used, consistent with the child's individualized plan, protective intervention plan, or treatment plan; and
- (C) "unauthorized use of force" means force that is not authorized per this paragraph. Unauthorized use of force includes unacceptable physical contact with a child including, but not limited to:
  - (i) slapping;
  - (ii) kicking;
  - (iii) punching;
  - (iv) poking;
  - (v) pulling hair or an ear;
  - (vi) pinching;
  - (vii) using a chokehold;
  - (viii) smothering;
  - (ix) spitting;
  - (x) head butting; and
  - (xi) tugging.

**"Foster care" or "foster care services"** means continuous 24-hour care and supportive services provided for a child in a foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent, per 10A O.S. § 1-1-105.

**"Foster parent"** means any person maintaining a therapeutic, emergency, specialized community, tribal, kinship, or foster family home, responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

**"GARC"** means the Grievance and Abuse Review Committee, per OAC ~~340:2-3-61~~ 310:678-7-1.

**"Group home for persons with developmental or physical disabilities"** means any establishment for not more than 12 residents who are 18 years of age or older and who have developmental or physical disabilities, and which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence of the residents and which offers or provides supportive assistance to residents requiring supportive assistance, per 10 O.S. § 1430.2.

**"Guardian" or "guardian of an incapacitated person"** means, per 30 O.S. § 1-111 a person who has been appointed by a court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of the person are met, to manage the estate or financial resources of the person, or both. The term includes persons appointed as general or limited guardians of the person, general or limited guardians of property, and special guardian, but does not include a person appointed as guardian ad litem, per 30 O.S. § 1-106.

**"Harm or threatened harm to the health or safety, of a child"** means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency, per 10A O.S. § 1-1-105.

**"Heinous and shocking abuse"** means abuse that includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means injury that involves:

- (A) substantial risk of death;
- (B) extreme physical pain;
- (C) protracted disfigurement;
- (D) loss or impairment of a function of a body member, organ, or mental faculty;
- (E) an injury to an internal or external organ or the body;
- (F) bone fracture;
- (G) sexual abuse or sexual exploitation;
- (H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation that is repeated or continuing;
- (I) torture including, but not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or
- (J) any other similar aggravated circumstance.

**"Hissom class member" or "HCM"** means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al., Case No. 85-CV-437-GKF.

**"Hotline"** means the statewide Centralized Abuse and Neglect Hotline, toll-free phone number, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and vulnerable adults. The Hotline operates 24 hours a day, seven days a week, 365 days a year.

**"Incapacitated person"** means, per 43 O.S. § 10-103:

- (A) any person 18 years of age or older
  - (i) who is impaired by reason of mental or physical illness or disability, dementia, or related disease, intellectual disability, developmental disability, or other cause, and

(ii) whose ability to receive and evaluate information effectively or to make and communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or meet essential requirements for his or her mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act.

**"Indecent exposure"** means, per 43A O.S. § 10-103, forcing or requiring a vulnerable adult to:

(A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

(B) touch or feel the body or private parts of another.

**"In-home supports"** or **"(IHS)"** means services funded through Medicaid Home and Community-Based Waivers, per Section 1915(c) of the Social Security Act and administered by OKDHS DDS. Services are provided in the service recipient's home, that are not residential services, per OAC 340:100-5-22.1, or group home services per 10 O.S. § 1430.2.

**"Injury"** means any hurt, harm, appreciable physical pain, or mental anguish.

**"Intermediate Care Facility for Individuals with Intellectual Disabilities"** or **"(IFC/IID)"** or a **"specialized facility for individuals with intellectual disabilities"** means a private or public residential facility, licensed per state law and certified by the federal government as a Medicaid services provider, for individuals with intellectual disabilities as defined in Title XIX rules and regulations of the Social Security Act.

**"Investigation"** means, regarding a:

(A) child, per 10A O.S. § 1-1-105, a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of a child, making it necessary to determine:

(i) the current safety of the child and the risk of subsequent abuse or neglect; and

(ii) whether child abuse or neglect occurred and whether the family needs prevention- and intervention-related services;

(B) vulnerable adult, a response to a maltreatment allegation, making it necessary to determine if maltreatment of the vulnerable adult occurred.

**"Investigation results"** means, per 10A O.S. § 1-1-105, a written response stating one of the following findings:

(A) regarding a child:

(i) "substantiated" means OCA determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect occurred;

(ii) "unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(iii) "ruled out" means OCA determined, after an investigation of a report of child abuse or neglect that no child abuse or neglect occurred; or

(B) regarding a vulnerable adult:

(i) "substantiated" means that in OKDHS judgment, there appears to be probable cause to suspect the existence of abuse, neglect, or exploitation;

(ii) "not substantiated" means that OKDHS has found insufficient evidence of abuse, neglect, or exploitation

**"Maltreatment"** means, per 56 O.S. § 1025.1, abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of vulnerable adults, as those terms are defined in 43A O.S. § 10-103; or abuse, neglect, sexual abuse or sexual exploitation of children, per 10A O.S. § 1-1-105.

**"Medicaid personal care assistant"** means, per 56 O.S. § 1025.1, a person who provides Medicaid services funded under Oklahoma's personal care program and is not a certified nurse aide or a licensed professional.

**"Medicaid personal care services provider"** means, per 56 O.S. § 1025.1, a program, corporation, or individual who provides services under the state Medicaid program personal care program or ADvantage Waiver to individuals who are elderly, or who have a physical disability.

**"Mental anguish"** means, in regard to a vulnerable adult, mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward one's self or others.

**"Mental health facility"** means a public or private hospital or related institution, as defined by 63 O.S. § 1-701, offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the ~~Department of Mental Health and Substance Abuse Services (ODMHSAS)~~ and designated by the Commissioner of ODMHSAS as appropriate for the inpatient evaluation or treatment of minors, per 43A O.S. § 5-502.

**"Near death"** means a child is in serious or critical condition as certified by a physician, as a result of abuse or neglect, per 10A O.S. § 1-1-105.

**"Neglect"** means in regard to:

(A) children, per 10A O.S. § 1-1-105:

(i) the failure or omission to provide any of the following:

(I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;

(II) medical, dental, or behavioral health care;

(III) supervision or appropriate caretakers to protect the child from harm or threatened harm of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware; or

(IV) special care made necessary by the physical or mental condition of the child;

(ii) the failure or omission to protect a child from exposure to any of the following:

(I) the use, possession, sale, or manufacture of illegal drugs;

(II) illegal activities;

(III) sexual acts or materials that are not age-appropriate; or

(iii) abandonment; or

(B) vulnerable adults, per 43A O.S. § 10-103:

(i) the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;

(ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

(iii) negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

**"OCA intake"** means the OCA maintained centralized intake system that receives authorized referrals.

**"Ombudsman"** or **"ombuds"** means an advocate.

**"Person responsible for the child's (PRFC) health, safety, or welfare"** means, per 10A O.S. § 1-1-105, a parent; legal guardian; custodian; foster parent; person 18 years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of: a public or private residential home, institution, facility or day treatment program, as defined in 10 O.S. § 175.20; or an owner, operator, or employee of a child care facility, as defined by 10 O.S. § 402.

**"Personal degradation"** means, per 43A O.S. § 10-103, a willful act by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display of an electronic image of a vulnerable adult by a caretaker, where the caretaker's actions constitute a willful act intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known

the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation does not include:

- (A) the taking, transmission, or display of an electronic image of a vulnerable adult for the purpose of reporting vulnerable adult abuse to law enforcement, OKDHS, or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules,
- (B) the taking, transmission, or display of an electronic image of a vulnerable adult for the purpose of treatment or diagnosis, or
- (C) the taking, transmission, or display of an electronic image of a vulnerable adult as part of an ongoing investigation.

**"Personal support team"** or **"(team),"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, per OAC 340:100-5-52.

**"Physical abuse"** means, in regard to children, an injury resulting from punching, beating, kicking, biting, burning, or otherwise harming a child. Even when the injury is not an accident, the alleged perpetrator may not have intended to hurt the child.

(A) The injury may result from:

- (i) extreme physical punishment inappropriate to the child's age or condition;
- (ii) a single episode or repeated episodes that range in severity from significant bruising to death; or
- (iii) any action that involves hitting with a closed fist, kicking, inflicting burns, shaking, or throwing the child, even when no injury is sustained, but the action places the child at risk of grave physical danger.

(B) A minor injury on a child older than 10 years of age is not considered physical abuse unless the actions that caused the injury placed the child in grave physical danger.

**"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or vulnerable adult.

**"Probable cause"** means, in regards to vulnerable adults, information or evidence that would lead a reasonable person to believe that abuse, neglect, or exploitation has been committed.

**"Problem resolution"** means verbal or written communications that seek to resolve concerns, complaints, service inadequacies, or issues the client or the client's team members identify, including the client's guardian, OCA advocate, volunteer advocate, or other persons interested in the client's welfare.

**"Protective custody"** means custody of a child taken by law enforcement or designated court employee, without a court order.

**"Reasonable and prudent parent standard"** means, per 10A O.S. § 1-1-105, the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child in foster care has been placed, or a designated official for a residential ~~child care~~ childcare facility where a child in foster care has been placed.

**"Referring party"** means the individual who informs OCA, calls the Hotline, or reports in writing that an incident occurred.

**"Reportable incident"** means an incident that must be reported because the person reporting knows, or has reasonable cause to believe or suspect, that a child or vulnerable adult may have been subjected to abuse or neglect.

**"Reporting party"** means the individual who initially tells someone verbally or in writing that an incident occurred.



**"Residential-child care childcare facility"** means, per 10A O.S. § 1-1-105, a 24-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives.

**"Restricted registry" or "Joshua's List"** means the registry created per 10 O.S. § 405.3, for the purpose of recording individuals who have:

(A) a substantiated finding of abuse or neglect, as defined in ~~Section 10A O.S. § 1-1-105 of Title 10A of the Oklahoma Statutes~~, by an individual when the abuse or neglect occurred to a child while in the care of a facility licensed, certified, operated, or contracted by or with OKDHS or OJA. The provisions of this subparagraph shall apply to:

(i) the Central Oklahoma Juvenile Center, the Oklahoma Juvenile Center for Girls, and the Southwest Oklahoma Juvenile Center upon the effective date of this act; and

(ii) facilities licensed by, certified by, or contracting with OJA ~~the Office of Juvenile Affairs~~ after November 1, 2018.

(B) revocation or denial of a ~~child care~~ **childcare** facility license; and

(C) a specified criminal history of an individual, as defined by OAC 340:110-1-10.1.

**"Safety threat"** means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future that without another person's intervention, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

**"Secure facility"** means, per 10A O.S. § 1-1-105, a facility which is designed and operated to ensure all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility that relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents. This definition excludes OJA-operated secure facilities.

**"Self-neglect"** means, per 43A O.S. § 10-103, the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

**"Sexual abuse"** means, with regard to:

(A) children, per 10A O.S. § 1-1-105, conduct, that includes, but is not limited to, rape, incest, and lewd or indecent acts or proposals made to a child as defined by law, by a PRFC; or

(B) vulnerable adults, per 43A O.S. § 10-103:

(i) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object;

(ii) for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(iii) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

**"Sexual exploitation"** means, with regard to:

(A) children, per 10A O.S. § 1-1-105, conduct that includes, but is not limited to, allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person 18 years of age or older or by a PRFC, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a PRFC; or

(B) vulnerable adults, per 43A O.S. § 10-103, conduct that includes, but is not limited to, a caretaker's causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult, as those acts are defined by state law.

**"Specialized foster care"** means, per OAC 317:40-5-50, foster care that:

(A) provides up to 24 hours per day of in-home residential habilitation services funded through the Community Waiver or the Homeward Bound Waiver. Specialized foster care serves individual ages 3 and older, up to 24 hours per day of supervision, supportive assistance, and training in daily living skills.

(B) is provided in a setting that best meets the specialized needs of the service recipient.

**"State Office administrator"** means, with regard to grievances filed by a:

(A) foster parent, a child being served by CWS, or an individual filing on behalf of a child being served by CWS: the OKDHS CWS director, or his or her designee;

(B) DDS client or an individual filing on behalf of a DDS client: the DDS director, or his or her designee.

**"Suspicious injury"** means, regarding a vulnerable adult, an injury that includes, but is not limited to, an injury that:

(A) appears inconsistent with the offered explanation(s) for the injury;

(B) is unusual;

(C) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living;

(D) is a minor injury located on or near a private body part or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during daily living activities; or

(E) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation.

**"Verbal abuse"** means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation, per 43A O.S. § 10-103.

**"Vulnerable adult"** means, per 43A O.S. § 10-103, an individual who is an incapacitated person or who because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively or to meet essential requirements for mental or physical health or safety or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

**"Ward"** means a person over whom a guardianship has been given by the court.

### **310:678-1-3. Customer complaint process**

(a) **Purpose and scope of the customer complaint process.** The customer complaint process provides ~~Office of Client Advocacy (OCA)~~ customers an opportunity to raise concerns about the OCA services they receive and to request a review ~~by OSDH from the advocate general or designee.~~ The process is available to OCA customers and clients, client relatives and associates, employees of other ~~Oklahoma Department of Human Services (OKDHS)~~ programs, providers, and any other OCA customers.

(b) **Procedure.**

(1) Any customer who is dissatisfied with or has a concern about OCA services, practices, or procedures, or who considers the action or inaction of an OCA employee to be improper or discourteous, submits a written complaint detailing their concerns to ~~OSDH the advocate general.~~ The complaint is sent either electronically to ~~OCA-advocategeneral@okdhs.org~~ or by regular mail to ~~Oklahoma State Department of Health, Office of Client Advocacy, PO Box 25352, Oklahoma City, OK 73125 123 Robert S. Kerr Ave., Oklahoma City, OK 73102.~~

(2) ~~The advocate general or designee~~ OSDH will reviews the complaint and informs the complainant of the results of the review within 20 business days after receipt of the complaint.

## **SUBCHAPTER 3. INVESTIGATIONS**

### **310:678-3-1. ~~Office of Client Advocacy (OCA)~~ investigations**

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) ~~Section 10A O.S. § 1-9-112(A)(3)(2)(d) and (e) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(3)(2)(d) and (e))~~ gives the Office of Client Advocacy (OCA) the responsibility to investigate allegations of abuse, neglect, sexual abuse, sexual exploitation, and misconduct by a person responsible for the child:

- (i) residing outside their own homes regardless of custody, other than children in foster care;
- (ii) receiving services from a community services provider or a community services worker, per 56 O.S. § 1025.1;
- (iii) in a day treatment program per 10 O.S. § 175.20; and
- (iv) residing in a state institution per 10 O.S. § 1406.

(B) 43A O.S. § 10-105 gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct investigations that involve:

- (i) Hissom class members;
- (ii) residents of the ~~Robert M. Greer Center (Greer)~~; and
- (iii) vulnerable adults receiving services from a community services provider, community services worker, Medicaid personal care services provider, or Medicaid personal care assistant, as those terms are defined in 56 O.S. § 1025.1.

(C) OCA investigates, pursuant to ~~Oklahoma Administrative Code (OAC) 340:75-3-430~~, reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts investigations of maltreatment allegations listed in this subsection. Per 10A O.S. § 1-9-112, OCA investigates allegations of:

(A) abuse, neglect, sexual abuse, sexual exploitation, and caretaker misconduct of children by persons responsible for a child regardless of custody residing outside their own homes, other than children in foster care or children in the custody of the ~~Oklahoma Office of Juvenile Affairs (OJA)~~ and placed in an OJA Secure facility as defined by ~~Section 10A O.S. § 2-1-103 of Title 10A of the Oklahoma Statutes~~. These investigations include, but are not limited to:

- (i) in OKDHS operated or licensed shelters and group homes;
- (ii) and children in facilities operated by, licensed by, or contracting with OJA;
- (iii) in community-based youth services shelters and community intervention centers that contract with OJA per 10A O.S. § 2-7-305;
- (iv) in facilities operated by or contracting with ~~Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS)~~;
- (v) in facilities operated by the J.D. McCarty Center of Oklahoma;
- (vi) residing in or attending educational classes at facilities operated by the ~~Oklahoma Department of Rehabilitation Services (ODRS)~~, the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and
- (vii) receiving services from a community services worker or community services provider per 56 O.S. § 1025.1;

(B) abuse and neglect of, and caretaker misconduct with regard to, children in day treatment programs per 10 O.S. § 175.20, including sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program;

(C) abuse, neglect, verbal abuse, and caretaker misconduct with regard to, residents of Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members living in Oklahoma and who do not reside in a private intermediate care facility for the intellectually disabled (ICF/ID); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker, community services provider, Medicaid personal care services provider, or Medicaid personal care assistant, per 56 O.S. § 1025.1.

(3) **Purpose.** OCA conducts independent and objective investigations of suspected maltreatment of clients by PRFCIs and vulnerable adult caretakers (VACs) in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality of Office of Client Advocacy records.** State and federal statutes and regulations including, but not limited to, 10A O.S. § 1-9-112(C); 10A O.S. § 1-6-102; 56 O.S. § 183; 43A O.S. § 10-110; and OAC 340:65-1-2 require confidentiality for certain OKDHS records. Information regarding clients is confidential and protected from unauthorized use. Only authorized individuals are permitted access to case records or provided information from OCA case records.

(1) **OCA investigations involving children.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving children include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) 10A O.S. §§ 2-6-102 through 106 applies to OCA investigations involving children in OJA custody and in facilities that contract with OJA.

(B) 10A O.S. §§ ~~1-2-106, 1-2-107~~, 1-6-102 ~~et seq.~~, through 106 and 1-6-107 applies to investigations involving children, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 340:75-1-46 applies to OCA investigations involving children in DHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving vulnerable adults include, but are not limited to, (A) through (C) of this paragraph.

(A) **Disclosure to meet client's protection and other needs.** When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) **Disclosure to district attorney and law enforcement.** District attorneys and staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from ~~the Advocate General~~ OSDH or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case

information from OCA records is not released for research purposes without the prior approval of the ~~advocate general~~ OSDH.

~~(C) Disclosure to others and the news media. In other situations, OCA investigative information is considered confidential per 43A O.S. § 10-110(A) and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives and the general public requesting information on a specific case are referred to the ~~advocate general~~ OSDH, the OCA programs administrator for investigations, or the ~~DHS~~ OSDH Office of Communications for a detailed explanation of ~~DHS~~ OSDH confidentiality rules.~~

### **310:678-3-2. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation**

(a) **Reporting abuse or neglect of a child under 18 years of age.** Persons having reason to believe that a child under 18 years of age is a victim of abuse or neglect are required per ~~Section 10A O.S. § 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101)~~ to promptly report it to ~~the Oklahoma Department of Human Services (OKDHS) Abuse and Neglect Hotline (Hotline) at 1-800-522-3511.~~ Any allegation of abuse or neglect reported in any manner to an OKDHS county office is immediately referred to the Hotline, per ~~Section 10A O.S. § 1-2-101.~~

(b) **Reporting abuse, neglect, verbal abuse, or exploitation of a vulnerable adult.** Any person having reasonable cause to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation reports to OKDHS or the municipal police department or sheriff's office in the county where the suspected abuse, neglect, verbal abuse, or exploitation occurred as soon as the person is aware of the situation. The reporting requirement applies to providers, per ~~Oklahoma Administrative Code (OAC) 340:2-3-2~~ and the provider's employees and agents.

(c) **Reporting caretaker misconduct regarding a child.** When the OKDHS Specialized Placement Unit Child Care Licensing office, OJA ~~the Office of Juvenile Affairs~~, or another source determines a:

- (1) pattern of misconduct exists by a facility or person responsible for the child of interest (PRFCI); or
- (2) facility administration fails to take appropriate corrective action in response to an investigation or written plan of compliance, a report should be made to the Hotline.

(d) **Reporting caretaker misconduct regarding a vulnerable adult.** Persons who have reason to believe caretaker misconduct, per ~~OAC 340:2-3-2 310:678-1-2~~, has occurred with regard to a vulnerable adult residing at the ~~Robert M. Greer Center (Greer)~~, promptly reports the allegation to the ~~Office of Client Advocacy (OCA).~~

(e) **Reporting a vulnerable adult's death, serious physical injury, or sexual assault.** In addition to the mandatory reporting requirements per ~~OAC 340:2-3-33(b) 310:678-3-2(b)~~ the events listed in (1) through (7) of this subsection are reported to OCA intake when a vulnerable adult's caretaker is alleged to be involved in the vulnerable adult's:

- (1) violent death, whether apparently homicidal, suicidal, or accidental;
- (2) death under suspicious, unusual, or unnatural circumstances;
- (3) death when the vulnerable adult is a resident Greer;
- (4) death when the vulnerable adult is a Hissom class member;
- (5) serious physical injury, per ~~OAC 340:2-3-2 310:678-1-2~~;
- (6) physical injury when the injury is:
  - (A) unexplained; and
  - (B) suspicious; or
- (7) rape, sodomy, or other sexual activity prohibited by state law.

(f) **Interference, retaliation, or discrimination related to the reporting obligations required by the Oklahoma Children's Code and the Protective Services for Vulnerable Adults Act prohibited.**

- (1) Per 10A O.S. § 1-2-101, the reporting obligations under the Oklahoma Children's Code are individual and no employer, supervisor, or administrator interferes with the reporting obligations of

any employee or other person or in any manner discriminates or retaliates against the employee or other person who in good faith reports suspected child abuse or neglect, or who provides testimony in any proceeding involving child abuse or neglect. Any employer, supervisor, or administrator who discharges, discriminates, or retaliates against the employee or other person is liable for damages, costs, and attorney fees.

(2) Per 43A O.S. § 10-104, no employer terminates the employment, prevents or impairs the practice, or occupation of, or imposes any other sanction on any employee solely for the reason the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act.

**(g) Immunity from liability for good faith report of abuse, neglect, or exploitation of a child or vulnerable adult.** Per 10A O.S. § 1-2-104, the Oklahoma Children's Code and 43A O.S. § 10-104, the Oklahoma Protective Services for Vulnerable Adults Act, any person exercising good faith and due care in making a report of alleged abuse, neglect, or exploitation has immunity from any civil or criminal liability the person might otherwise incur. The person has the same immunity with respect to participation in any judicial proceeding resulting from the report.

**(h) Failure to report abuse, neglect, or exploitation of a child or vulnerable adult.** Any person who knowingly and willfully fails to promptly report abuse, neglect, or exploitation as required per 10A O.S. § 1-2-101 and 43A O.S. § 10-104 may be subject to administrative action or criminal sanctions upon conviction. In addition, failure to report by a OKDHS employee may result in disciplinary action.

**(i) False report of abuse, neglect, or exploitation of a child or vulnerable adult.**

(1) Per 10A O.S. § 1-2-101, any person who knowingly and willfully makes a false report regarding alleged maltreatment of a child, or a report the person knows lacks factual foundation, may be reported by DHS to local law enforcement for criminal investigation, and upon conviction, is guilty of a misdemeanor.

(2) Per 43A O.S. § 10-104, any person who willfully or recklessly makes a false report of abuse, neglect, or exploitation of a vulnerable adult may be liable in a civil action for actual damages and for punitive damages set by the court or jury regarding the reported party.

**(j) Method of reporting.**

(1) Each report alleging abuse or neglect of a child is screened by the OKDHS Hotline in compliance with ~~Child Welfare Services~~ CWS policies and procedures. Each accepted report of a child within ~~Office of Client Advocacy (OCA)~~ investigative authority and scope is assigned to OCA for possible investigation. Reports may be phoned to the Hotline at 1-800-522-3511, faxed to 405-936-0922, emailed to [STO.Hotline.Referral@OKDHS.org](mailto:STO.Hotline.Referral@OKDHS.org), or mailed to Child Abuse and Neglect Hotline, OKDHS, PO Box 25352, Oklahoma City, Oklahoma 73125-0352.

(2) Reports of abuse, neglect, or exploitation of a Hissom class member, resident of Greer, or other vulnerable adults receiving ~~Developmental Disabilities Services (DDS)~~ services are reported to OCA except for weekends and after business hours when the reports are made to the Hotline at 1-800-522-3511. Reports to OCA may be phoned to 1-800-522-8014 or 405-522-2720, faxed to 405-522-2680, or emailed to [oca.intake@okdhs.org](mailto:oca.intake@okdhs.org) or [oca.intake@health.ok.gov](mailto:oca.intake@health.ok.gov).

(3) Reports of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult receiving services from a Medicaid personal care services provider are reported to the Adult Protective Services office, except for weekends and after business hours when the reports are made to the Hotline at 1-800-522-3511.

(4) Reports of allegations may be submitted by completing ~~Form 15GN001E, Office of Client Advocacy Intake Referral~~, a referral on the prescribed form approved by OSDH and sent to the applicable OCA intake unit.

**(k) Confidentiality of reporting party's identity.** The identity of the person who reports abuse or neglect of a child per 10A O.S. § 1-6-102(H)(7), or abuse, neglect, or exploitation of a vulnerable adult per 43A O.S. § 10-105.1(C)(2), is kept confidential and is not disclosed. OKDHS accepts anonymous reports of abuse, neglect, or exploitation of a child or vulnerable adult.

(l) **Staff training regarding reporting obligations.** Each administrator ensures the employee receives relevant training regarding the employee's responsibility to report a child or vulnerable adult's alleged abuse, neglect, or exploitation. Except for employees of a DDS provider, the employee receives the training within 30 calendar days of the employee's initial employment and receives subsequent annual training. DDS provider employee training is as specified per OAC 340:100-3-38 et seq.

**310:678-3-3. Facility administrator's responsibilities regarding allegations reportable to ~~Office of Client Advocacy (OCA)~~**

(a) **Facility administrator's responsibility for protection, safety, health, and welfare of children and vulnerable adults.** When OCA intake receives an allegation of maltreatment by a vulnerable adult caretaker (VAC) or a person responsible for the child of interest (PRFCI), from anyone other than the administrator or the administrator's designee of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator or the administrator's designee ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged regarding a child or vulnerable adult, the administrator or the administrator's designee immediately notifies the appropriate local law enforcement authority. The types of criminal activity reported to law enforcement include, but are not limited to, the use or possession of illegal drugs; domestic abuse; illegal sexual activity; illegal use of alcohol; theft of money, property, or medication that is a controlled substance; and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator or the administrator's designee takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. When necessary to ensure safety, a Plan for Immediate Safety (PFIS) is completed with an OCA investigator. The creation of the PFIS may include consultation with: ~~Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services (DDS), Child Welfare Services (CWS) Specialized Placements and Partnerships Unit (SPPU), Child Care Services (CCS), or the Oklahoma Office of Juvenile Affairs (OJA).~~ OCA does not determine or approve personnel actions taken by an administrator or the administrator's designee in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hisson class member (~~HCM~~) by a provider's employee or subcontractor, the administrator or the administrator's designee ensures the protection and medical attention for any HCM named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the HCM's case manager to ensure protection, medical attention, or both for the HCM. OCA intake notifies the applicable DDS area manager by email within one business day of receipt of a referral of abuse or neglect by an individual serving as provider for the HCM.

(b) **Preliminary assessment.** Upon learning of an ~~incident reportable to DHS~~ reportable incident, the administrator or the administrator's designee:

(1) immediately ensures the safety of any client(s) named in the referral;

(2) secures any physical evidence, including any video, photographic, or other recorded evidence, and gathers documents within the possession, custody, or control of the facility or provider relevant to the allegation;

(3) immediately photographs injuries. Photographs are taken by a person uninvolved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and other agency or law enforcement authorities involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator or the administrator's designee determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator or the administrator's

designee collects medical records, documents, reports, and other documentary evidence that pertains to the alleged incident, within the facility or in the provider's possession, custody, or control, and places them in a file for OCA investigative and other investigative authorities' use. The administrator or designee securely maintains documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original written statements, incident reports, relevant documents, records, reports, photos, audio or video recordings, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Facility or provider employees do not conduct an investigation of an alleged incident while the OCA decision to accept the referral for investigation is pending, or during an open OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries regarding those involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment. Once there is reason to believe maltreatment may have occurred, the preliminary assessment ceases, and the incident is reported to the OKDHS Abuse and Neglect Hotline (Hotline) when it involves a juvenile or to the OCA Intake Unit when the alleged victim is a vulnerable adult. Outside of regular ~~DHS~~-business hours reports of abuse or neglect of a vulnerable adult are reported to the Hotline. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. The assigned OCA investigator coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** The facility or provider administrator is responsible for the care of each individual, per ~~Oklahoma Administrative Code (OAC) 340:2-3-32(a)(2)~~ 310:678-3-1 and designates a contact person for OCA. The administrator or the administrator's designee informs OSDH the advocate general of the name, phone number, and email address of the designated contact person and immediately notifies ~~the advocate general~~ OSDH of changes to the information by email or mail. The designated contact person is available by phone or email at all times.

(g) **Documentation provided by the ~~Robert M. Greer Center (Greer)~~.** Within one ~~DHS~~-business day of Greer submitting an incident report to the ~~Oklahoma State Department of Health~~ OSDH, a five-business day report, or a final report regarding an allegation reported to OCA intake, the facility sends OCA intake a copy by email or fax.

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake or to the Hotline, including OCA investigation reports distributed, per ~~OAC 340:2-3-36~~ 310:678-3-5, in a manner that protects information confidentiality.

### **310:678-3-4. Processing referrals received by the Office of Client Advocacy (OCA)**

(a) **OCA referral screening options.** Except for referrals received from the ~~Oklahoma Department of Human Services (OKDHS) Abuse and Neglect Hotline (Hotline)~~ involving a child, OCA intake records on ~~Form 15GN001E, Office of Client Advocacy Intake Referral,~~ the specifics of each referral and makes an appropriate disposition. All known information is considered when determining the appropriate disposition and course of action. If the information is unclear and it appears the allegation may rise to the level of abuse, neglect, or exploitation, a preliminary inquiry is conducted by intake staff. The screening disposition options and criteria include, but are not limited to, the options described in (1) through (12) of this subsection.

(1) **Assign for OCA investigation.** This screening disposition means OCA opens an investigation of an allegation of the person responsible for the child of interest (PRFCI) or vulnerable adult caretaker (VAC) maltreatment.

(2) **Assign for internal caretaker conduct review.** This screening disposition means the facility or provider named in the referral is given responsibility to conduct an internal caretaker conduct review per ~~Oklahoma Administrative Code (OAC) 340:2-3-37~~ 310:678-3-7. Within one business day of receiving a referral given this disposition, OCA intake notifies the administrator or



designated contact person. This screening disposition applies to allegations involving vulnerable adults residing at the ~~Robert M. Greer Center (Greer)~~ and facilities for children not licensed by or contracted with OKDHS.

(3) **Refer to OCA advocate.** This screening disposition is made when the referral involves a Hissom class member or a resident of Greer and involves a concern based on the information provided and does not rise to the level of maltreatment.

(4) **Refer to another administrative entity.** This screening disposition means OCA intake forwards the information to another state agency or OKDHS program or office. This screening disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within OCA purview, but involves complaints about employee performance or allegations within the scope of another administrative entity.

(5) **Refer to OKDHS Office of Inspector General (OIG).** An allegation regarding the alleged misuse of a Supplement Nutrition Assistance Program (SNAP) Electronic Benefits Transfer (EBT) card, or Social Security Administration fraud or overpayment, is sent to OKDHS OIG for investigation. This disposition is also utilized when there are allegations of fraud, misconduct, or criminal behavior against current OKDHS employees.

(6) **Refer to law enforcement.** This screening disposition is used when the referral involves possible criminal activity and the reported allegations are not within OCA investigative authority per OAC 340:2-3-32(a) 310:678-3-1. This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency is investigating the matter. A case may warrant simultaneous OCA involvement and referral to law enforcement. In those instances, notification to law enforcement is appropriately documented.

(7) **Refer for grievance.** This screening disposition means the referral is directed to the appropriate entity for processing as a grievance, when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. When the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. A referral may be appropriate for processing as a grievance when the complaint concerns:

(A) conditions that do not endanger clients or residents;

(B) staff improprieties that do not constitute maltreatment; and

(C) privileges and restrictions not involving the use of isolation, force, or restraints.

(8) **No action required.** This screening disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another screening disposition.

(9) **Refer to administration.** This screening disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency, but is relevant to the facility or provider operations.

(10) **Refer to OKDHS ~~Developmental Disabilities Services (DDS)~~ Quality Assurance (QA).** This screening disposition is made when an allegation involves an alleged contract violation that does not involve caretaker maltreatment.

(11) **Refer for special advocacy.** This screening disposition is made when the referral constitutes a request for advocacy services per OAC 340:2-3-75 310:678-9-4.

(12) **Refer to ~~State Office~~ OKDHS DDS case management.** This screening disposition is made when an allegation does not rise to the level of abuse, neglect, or exploitation but involves an issue of person-centered planning or case management follow-up on behalf of a vulnerable adult.

(b) **Law enforcement notification.** Law enforcement is notified when a referral opened as an OCA investigation involves possible criminal activity on the part of a PRFCI or a VAC.

(c) **Assignment process for referrals opened for investigation.** Investigations involving vulnerable adults are assigned within one business day of a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made, and the investigation commences immediately.

(d) **Information provided to reporting party.** The reporting party upon proper identification may be provided with information regarding the disposition of the referral.

**310:678-3-5. Office of Client Advocacy (OCA) investigation procedures for cases involving child victims**

(a) **OCA investigation initiation.** Per ~~Section 10A O.S. § 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma Human Services (OKDHS)~~ OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines, ~~per 10A O.S. § 1-2-105 and Oklahoma Administrative Code (OAC) 340:75-3-130.~~

(b) **Joint investigations with law enforcement.** In accordance with 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

- (1) whenever feasible for investigations involving cases of child sexual abuse, sexual exploitation, physical abuse, and neglect cases;
- (2) to enhance the investigative process and maximize services provided to affected children and families; and
- (3) to consult with other MDT team members, as appropriate.

(c) **Investigation notice and written description of investigation process provided to alleged perpetrator.** Per 10A O.S. § 1-2-106, at initial contact with an alleged perpetrator who is the subject of an investigation, OCA advises the alleged perpetrator of the specific complaint or allegation made against him or her. If OCA is unable to locate the alleged perpetrator, as soon as possible after initiating the investigation, OCA provides him or her a brief and easily understood written description of the investigation process, per 10A O.S. § 1-2-106.

(d) **Facility or provider administrator responsibility to arrange document production, visits, and interviews.** The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

- (1) The facility or provider administrator or the administrator's designee who employed the alleged perpetrator at the time of the alleged incident informs the employee of:
  - (A) the OCA investigator's name and phone number;
  - (B) the investigative process described in this Section;
  - (C) the employee's rights and responsibilities relating to the investigation described in (1) of this Section, except as stated in (2) of this subsection using ~~Form 15IV005E, the prescribed Rights and Responsibilities of Alleged Perpetrators form or forms approved by OSDH, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice,~~ a copy of which is provided to the OCA investigator; and
  - (D) the allegation made against the alleged perpetrator without divulging the reporting party's identity or the substance of the evidence.

(2) When the alleged perpetrator is subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in ~~OAC 340:2-3-39.1~~ 310:678-3-10.

(A) The facility or provider administrator or the administrator's designee promptly completes ~~Form 15IV005E and Form 15IV004E~~ the prescribed form or forms approved by OSDH.

(B) The facility or provider administrator or the administrator's designee mails ~~Form 15IV005E and Form 15IV004E~~ the prescribed form or forms approved by OSDH to the worker when it is not possible to hand-deliver it to the worker who is no longer employed by the provider.

(e) **OCA access to victims, employees, clients, facilities, files, and other records.**

(1) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still the facility's or provider's client.

(2) During an OCA investigation, OKDHS, ~~Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and~~

~~Substance Abuse Services (ODMHSAS)~~, the J.D. McCarty Center, providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(3) Denial of access may be grounds for a contract termination between OKDHS and the contractor or for other courses of action.

**(f) Discrimination, retaliation, or interference in an OCA investigation prohibited and subject to criminal penalties.**

(1) An employer, supervisor, administrator, or governing body or entity must not interfere with the any employee's or other person's reporting obligations or in any manner discriminate or retaliate against a person who in good faith reports suspected child abuse or neglect or provides testimony in any proceeding involving child abuse or neglect, per 10A O.S. § 1-2-101.

(2) 21 O.S. § 455 states it is a felony to:

(A) willfully prevent or attempt to prevent, any person who makes an abuse or neglect report, pursuant to 10A O.S. § 1-2-101 from giving testimony or producing any record document or other object; or

(B) threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.

**(g) and responsibilities.** The alleged perpetrator's rights and responsibilities during an OCA investigation are outlined in this subsection.

(1) **Rights.** During the investigation process, an alleged perpetrator has the right to:

(A) be advised by OCA of the nature of each allegation made against him or her;

(B) be advised by OCA of the investigative process;

(C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;

(D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning his or her rights and responsibilities in OCA investigations, including the right to seek counsel;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by OCA of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, the alleged perpetrator has the responsibility to:

(A) prepare written statements and reports relevant to the investigation, upon request;

(B) be available for interviews and accommodate the OCA investigator with scheduling interviews;

(C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions.

**(h) Educational employees.** This subsection applies to an educational employee, who is either a witness or the alleged perpetrator in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) OCA investigates educational employees who meet the definition of a caretaker, per OAC ~~340:2-3-2~~ 310:678-1-2.

**(i) Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an alleged perpetrator in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(j) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (2) medical records;
- (3) photographs or video;
- (4) facility or provider logs; and
- (5) activity and tracking documents.

(k) **Investigative interviews.** When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person, other than the OCA investigator and the person interviewed, is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the person interviewed may attend an interview only as a silent observer with OSDH's ~~the advocate general's or the advocate general's designee's~~ prior permission.

(l) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, persons allegedly directly or indirectly involved in the allegation, persons with relevant knowledge, and each alleged perpetrator.

(m) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, the person interviewed or anyone in attendance is not permitted to record. Interview recordings remain with the OCA investigative file.

(n) **"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child.

(o) **Allegation presentation for witnesses later identified as alleged perpetrators.** During an investigation, when a witness is identified as an alleged perpetrator, the OCA investigator interviews the witness again to inform the witness that he or she is an alleged perpetrator. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator of the new allegation and of the potential, additional alleged perpetrators.

(p) **Opportunity for alleged perpetrators to respond.** Following the alleged perpetrator's initial interview, if the OCA investigator obtains information the alleged perpetrator did not have an opportunity to respond to, the OCA investigator conducts another interview with the alleged perpetrator. The OCA investigator advises the alleged perpetrator of the substance of the new information and provides an opportunity to present a response.

(q) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews a person who is deaf or hard of hearing or with limited English proficiency, OCA provides oral or sign language interpreter services by an independent and qualified interpreter. ~~Interpreter services for OKDHS employees and clients are provided per OAC 340:1-11-10.~~

(r) **Scheduling interviews.** To schedule an interview with an alleged perpetrator, the OCA investigator phones, emails, or mails the facility or provider agency administrator or the administrator's designee that employs the alleged perpetrator. After two documented attempts to schedule an interview, the OCA

investigator, contacts the facility or provider agency administrator or the administrator's designee in writing advising the administrator of his or her responsibility to compel the employee to participate. The OCA investigator notifies ~~OKDHS Developmental Disabilities Services (DDS)~~ Quality Assurance or Child Welfare Services Specialized Placements and Partnerships Unit staff to ensure compliance with contract provisions. If unsuccessful, the OCA investigator sends a letter by mail to the alleged perpetrator's last known address notifying the alleged perpetrator of the investigation, offering an opportunity to be interviewed, and setting a date and time for a response. The letter informs the alleged perpetrator of the consequence of failing to participate. The OCA investigative report is completed without the alleged perpetrator's statement, and a finding is made based on the available information. For other persons needing to be interviewed, the OCA investigator follows the same protocol for an alleged perpetrator, but the letter only requests his or her participation in an interview.

(s) **Areas(s) of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs him or her of AOCs. Upon the investigation's completion, all identified AOCs are provided in writing to the facility or agency provider administrator.

(t) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation(s) investigated, including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries the alleged victims sustained;
- (3) information regarding involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;
- (5) the applicable definition(s) of caretaker misconduct or the maltreatment type at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s), per (x) of this Section;
- (7) a list of the involved parties, titles and roles in the matter, if they were interviewed and, when interviewed, whether the interviews face-to-face or by phone;
- (8) the name, address, and phone numbers of any interpreter employed during the investigation;
- (9) an explanation of the basis for the finding(s);
- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- (11) a list of relevant documents and records reviewed during the investigation;
- (12) a list of attachments to the report provided upon request; and
- (13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

(u) **OCA findings and completion time requirements regarding investigations involving a child.** Per 10A O.S. § 1-9-112.1, the OCA investigation of a child abuse or neglect report results in a written report, with findings, within thirty (30)- calendar days from the referral date.

(v) **Notice of child abuse or neglect findings.**

- (1) After completing the OCA investigation, a findings letter is sent to the:
  - (A) alleged perpetrator; and
  - (B) facility or provider administrator.
- (2) When a facility or provider administrator is named as an alleged perpetrator, a findings letter is mailed to the facility's or provider's chair of the board of directors or governing entity, or to the director of the state agency operating the facility, as applicable.
- (3) The OCA investigator verbally provides the findings to the child victim's parents or legal guardian.

(w) **Appeal process for substantiated child abuse or neglect findings.** The 2010 Child Abuse Prevention and Treatment Act, Section 5101 et seq. of Title 42 of the United States Code, requires that ~~OKDHS~~ the State of Oklahoma provide persons who disagree with a substantiated finding of child

abuse or neglect with a procedure for appealing and responding to appeals of those findings, ~~per OAC 340:2-3-39.~~

(x) **OCA investigation report submitted to OKDHS Child Welfare Services (CWS).** Per 10A O.S. § 1-9-112.1, the OCA abuse or neglect investigation report concerning a child in OKDHS custody is submitted to the CWS director or the director's designee within thirty (30)-calendar days from the referral date.

(y) **Dissemination of investigation reports involving persons subject to the OKDHS Community Services Worker (CSW) Registry.**

(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant are processed for the CSW Registry, ~~per OAC 340:2-3-29.~~

(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred.

(3) OCA sends an investigation summary to the designated leadership within the facility or provider administrator within five ~~OKDHS~~-business days of the investigation closing. Nothing in this subsection is construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.

(4) The investigation report is sent to the OKDHS DDS director or designee.

(z) **Dissemination of reports involving alleged perpetrators subject to the Restricted Registry, Joshua's List.**

(1) All OCA investigations involving a substantiated abuse or neglect finding against an alleged perpetrator when the abuse or neglect occurred to a child while in the care of a facility licensed, certified, operated, or contracted with OKDHS or OJA are processed for the Restricted Registry, per OAC 340:110-1-10.1; and OCA submits a copy of the report to the Office of Background Investigations.

(2) A copy of the investigation report is sent to the district attorney in the county where the suspected abuse or neglect occurred, per 10A O.S. § 1-2-105.

(3) When the victim is a child receiving OKDHS DDS services, OCA sends a copy of the report to the DDS director or the director's designee.

(aa) **OCA investigative reports confidentiality.** Persons receiving copies of OCA investigative reports regarding a child are bound by confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

### **310:678-3-6. ~~Office of Client Advocacy (OCA) investigation procedures for cases involving vulnerable adults~~**

(a) **Initiation of OCA investigation initiation.** ~~Oklahoma Human Services (OKDHS)~~ OCA within its investigative scope and authority, ~~per Section 10-105 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105),~~ conducts a prompt and thorough investigation upon receiving a report of maltreatment of a vulnerable adult who is a recipient of home and community based waiver services, State Plan Personal Care (SPPC) services, living choice waiver services, medically fragile waiver services, or a Hissom Class Member, or a resident of the ~~Robert M. Greer Center (Greer).~~

(1) An OCA investigator initiates an investigation when they make face-to-face contact with the vulnerable adult, who is the alleged victim.

(2) The OCA investigator initiates the investigation as soon as possible within five-calendar days, not to exceed 120 hours from the time of the referral receipt.

(3) In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation as soon as possible, but not to exceed 24 hours from the date of case assignment.

(4) During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect or needs involuntary protective services or court intervention, the OCA investigator promptly makes a referral to the OKDHS Adult Protective Services (APS) and coordinates with APS to ensure the vulnerable adult's safety, ~~per 43A O.S. § 10-106.~~

- (b) **Joint investigations with law enforcement.** Investigations regarding vulnerable adults are conducted jointly with law enforcement when possible.
- (c) **Reportable incident regarding vulnerable adults.** The OKDHS vulnerable adult investigations include allegation notification to the local law enforcement agency, per 43A O.S. § 10-105.
- (d) **Investigation notice provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**
- (1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, OKDHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, regardless of whether the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.
  - (2) When the vulnerable adult retains the capacity to consent to voluntary services and does not want a caretaker or next of kin to receive an investigation notification, OKDHS abides by the vulnerable adult's wishes.
- (e) **Facility or provider administrator responsibility to arrange document production, visits, and interviews.** The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request. The facility or provider administrator or the administrator's designee who employed the accused VAC at the time of the alleged incident informs the employee of:
- (1) the OCA investigator's name and phone number;
  - (2) the investigative process described in this Section;
  - (3) the employee's rights and responsibilities relating to the investigation described in (h) of this Section, using ~~Form 15IV005E, the prescribed Rights and Responsibilities of Accused Caretakers~~ form or forms approved by OSDH, or a substantially similar provider or agency form, and ~~Form 15IV004E, Address Information Notice~~, a copy of which is provided to the OCA investigator;
  - (4) the allegation made against the VAC without divulging the reporting party's identity or the substance of the evidence; and
  - (5) obtains the signature of the CSW on the forms listed in (3) of this subsection and provides a copy to the OCA investigator.
- (f) **OCA access to victims, employees, clients, facilities, files, and other records.**
- (1) Per 43A O.S. § 10-105, the OKDHS investigation includes:
    - (A) a visit to the home or other place of residence of the person who is the subject of the report;
    - (B) a private interview with the person who is the subject of the report; and
    - (C) consultation with persons who have knowledge of the circumstances.
  - (2) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.
  - (3) During an OCA investigation, OKDHS, ~~Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (OMDHSAS)~~, providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.
  - (4) Denying access may be grounds for a contract termination between OKDHS and the contractor.
- (g) **Discrimination, retaliation, or interference in an OCA investigation prohibited.**
- (1) 21 O.S. § 455 states it is a felony to:
    - (A) willfully prevent or attempt to prevent any person who make an abuse or neglect report, pursuant to 43A O.S. § 10-104 from giving testimony or producing any record document or other object; or
    - (B) threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.

(2) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denying access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104 states no employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 et seq.

(h) **Rights and responsibilities of accused VAC.** The rights and responsibilities of the accused VAC during an OCA investigation are outlined in this subsection.

(1) **Rights.** During the investigation process, an accused VAC has the right to:

- (A) be advised of the nature of each allegation made against him or her;
- (B) be advised by OCA of the investigative process involving caretaker maltreatment.
- (C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;
- (D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the reporting party's identity;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a his or her rights and responsibilities in OCA investigations, including the right to seek counsel;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- (H) be notified in writing by his or her employer of the investigation's outcome when the investigation involves a VAC.

(2) **Responsibilities.** During the investigative process, the accused VAC has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation, upon request;
- (B) be available for interviews and accommodate the OCA investigator with scheduling interviews;
- (C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (D) provide pertinent information and respond fully and truthfully to questions.

(i) **VAC address and email.** During the investigative process the accused VAC provides OCA with a current mailing address and email address, if applicable.

(1) It is the responsibility of the accused VAC to promptly notify OCA of any changes in mailing address or email address.

(2) OKDHS sends all subsequent communications concerning the investigation and administrative actions to the last known mailing address or email address as applicable, as provided by the accused VAC.

(3) OKDHS may serve notice of investigative findings as provided in this Section and administrative actions per ~~Oklahoma Administrative Code (OAC) 340:2-3-39.1~~ 310:678-3-10 to the last known mailing address or email address as applicable as provided by the accused VAC.

(4) Failure to notify OCA of any changes in mailing address or email address may result in placement of the accused VAC in the Community Services Worker Registry.

(j) **Educational employees.** This subsection applies to an educational employee who is either a witness or the accused VAC in an OCA investigation.

(1) The facility or provider agency administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) OCA investigates educational employees who meet the caretaker definition, per this subsection.



(k) **Contractor's employees.** This subsection applies to an employee of a provider or facility contractor when the employee is an accused VAC in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative review, advising the employee of his or her rights and responsibilities related to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(l) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

(1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(2) medical records;

(3) photographs, videos, or both;

(4) facility or provider logs;

(5) activity and tracking documents;

(6) the vulnerable adult's Individual Plan (IP); and

(7) all relevant ~~OKDHS Developmental Disability Services (DDS)~~ documents and forms.

(m) **Investigative interviews.** When there is an alleged injury, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the OCA investigator and the person interviewed is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the interviewee attends an interview only as a silent observer with ~~OSDH's the advocate general's or the advocate general's designee's~~ prior permission.

(n) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who are allegedly directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each accused VAC. At the time of the interview of the accused VAC, if the OCA investigator determines that a signed ~~Form 15IV004E~~, Address Information Notice Form, has not previously been provided to OCA, the investigator obtains it from the accused VAC. If the interview is being conducted in a manner other than in-person, the investigator reads ~~Form 15IV004E~~ the Address Information Notice Form to the accused VAC and:

(1) obtains verbal acknowledgement of understanding from the accused VAC;

(2) records the information on ~~Form 15IV004E~~ the Address Information Notice Form as provided by the accused VAC; and

(3) obtains consent to sign ~~Form 15IV004E~~ the Address Information Notice Form on behalf of the accused VAC.

(o) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, the interviewee and anyone in attendance is not permitted to record the interview. Interview recordings remain with the OCA investigative file.

(p) **"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a vulnerable adult.

(q) **Allegation presentation for witnesses later identified as accused VACs.** During an investigation, when a witness is identified as a potential accused VAC, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused VAC. At the time, the witness is informed of the substance of the evidence and provided an opportunity to respond. The OCA

investigator informs the facility or provider agency administrator of the new allegation and of the potential additional accused VAC. The OCA investigator advises the accused VAC of the substance of the new information and provides an opportunity to present a response.

(r) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews a person who is deaf or hard of hearing or who has limited English proficiency, OCA provides interpreter services by an independent and qualified interpreter. ~~Interpreter services for OKDHS employees and clients are provided, per OAC 340:1-11-10.~~

(s) **Areas of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs him or her of AOCs. When the investigation is completed, all identified AOCs are provided in writing to the facility or agency provider administrator.

(t) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation investigated, including date, time, and location of the alleged incident, the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries the alleged victim sustained;
- (3) information regarding involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;
- (5) the applicable definition of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the findings, per (x) of this Section;
- (7) a list of the involved parties, titles, and roles in the matter, if they were interviewed and, when they were interviewed, whether the interviews were face-to-face by phone, or virtual;
- (8) the name, address, and phone numbers of any interpreter employed during the investigation;
- (9) an explanation of the basis for the findings;
- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- (11) a list of relevant documents and records reviewed during the investigation;
- (12) a list of attachments to the report provided upon request; and
- (13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

(u) **OCA investigation findings regarding a vulnerable adult.** The OCA investigation of a report of vulnerable adult maltreatment of a vulnerable adult results in a written report with findings within 60-calendar days from the referral date.

(v) **Identification of the responsible VAC.** When the evidence gathered during the investigation is sufficient to substantiate vulnerable adult maltreatment but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The facility or provider administration may be named as responsible VAC when the policies, procedures, or practices the administration adopted are the primary factor resulting in individual client maltreatment of individual clients.

(w) **Notice of maltreatment findings to a vulnerable adult.**

- (1) After the OCA investigation is complete a findings letter is provided to the:
  - (A) accused VAC;
  - (B) legal guardian and next of kin; and
  - (C) facility or provider administrator.
- (2) When a facility or provider administrator is named as an accused VAC, a findings letter is provided to the facility's or provider's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.

(x) **Appeal process for substantiated maltreatment findings.** The appeal process is provided for accused VACs who disagree with a substantiated maltreatment finding, per OAC 340:2-3-39.1 310:678-3-10.

**(y) Dissemination of OCA investigation reports involving VACs not subject to the CSW Registry.**

- (1) Except as provided in (4) of this subsection and consistent with 43A O.S. § 10-110, a summary of the final OCA investigation report involving a vulnerable adult is sent to the administrator of an affected facility or provider agency. The summary is provided within five- ~~(5)~~ business days of the investigation's closure. The administrator is responsible for notifying the accused VAC and the vulnerable adult's legal guardian or next of kin of the OCA finding.
- (2) When the referral alleges maltreatment, a copy of the report is sent to the applicable district attorney.
- (3) A copy of the report is also sent to the DDS State Office administrator, ODRS director, or ODMHSAS director, as applicable.
- (4) When a facility or provider administrator is named as an accused VAC in the allegation, the OCA forwards a summary of the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.
- (5) A copy of the OCA report is sent to ~~the Oklahoma State Department of Health (OSDH)~~ when the investigation involves a day treatment program.
- (6) When the accused VAC is an OKDHS employee, the relevant state office administrator provides the accused VAC with a letter summarizing the allegation and stating the OCA finding.
- (7) When there is a substantiated finding of client maltreatment by a licensed nurse, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.
- (8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation. This includes but is not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide.
- (9) When there is substantiated maltreatment by a guardian, a copy of the OCA investigation report is submitted to the applicable guardianship court.
- (10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

**(z) Dissemination of investigation reports involving Hisom Class Members (HCMs) and VACs subject to the CSW Registry.**

- (1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry, ~~per OAC 340:2-3-29.1.~~
- (2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104.
- (3) OCA sends an investigation summary to the facility or provider administrator within five-business days of the investigation's closure. Nothing in this subsection will be construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.
- (4) The investigation report is sent to the OKDHS DDS director or designee, the Community Living, Aging, and Protective Services director or designee, or the OHCA ~~Oklahoma Health Care Authority~~ director or designee, as applicable.
- (5) OCA notifies the vulnerable adult's accused caretaker and legal guardian or next of kin of the investigation finding. When the vulnerable adult is an HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding.
- (6) When an investigation involves a vulnerable adult with a legal guardian, a copy of the completed investigation report must be filed with the court the guardian is accountable to, per 43A O.S. § 10-105.

**(aa) Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports or summaries regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(1) All investigative records OKDHS receives that are created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(2) Person seeking redacted identifying information, per 43A O.S. § 10-110, contained in the OCA investigative report, in any summary or other information contained in any other reports, records, or working papers used or developed in the investigation, must obtain a court order authorizing the information's release of such information.

(A) All reports, records, working papers, and all information contained therein remain confidential after the OKDHS release; and

(B) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(bb) **Substantiated findings involving Greer.** OCA investigation report findings involving vulnerable adult maltreatment at Greer are considered final when the report does not contain a substantiated finding. In cases with a substantiated finding, the report is final upon completion of the review process, per ~~340:2-3-39~~ 310:678-3-9. When OKDHS DDS staff receives a copy of a final OCA investigative report or notice that a review, per ~~OAC 340:2-3-39.4~~ 310:678-3-10, is concluded, within 30-calendar days, the applicable director notifies OSDH ~~the advocate general~~ in writing of:

(1) the personnel action taken or to be taken with regard to each accused VAC name in the report;

(2) the corrective action taken or to be taken regarding AOCs notice in the report; and

(3) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations of the worker's maltreatment of a vulnerable adult. If such confirmations exist, the basis for each such finding, and the personnel action taken in response.

(cc) **Findings involving an HCM.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused VAC named in an OCA investigation report. The DDS director or the director's designee notifies OSDH ~~the advocate general~~ in writing:

(1) when personnel action was or will be taken with regard to each accused VAC named in the report; and

(2) of corrective action taken or to be taken regarding AOCs noted in the report.

(dd) **Ten-day staffing.** Ten days after the investigation is initiated, the provider has the right to request an investigative status update. The provider makes the request to the ~~the~~ assigned OCA Investigator's programs manager or programs supervisor. The ten-day staffing includes the provider administrator, the programs manager or programs supervisor and the OCA investigator. OCA provides an update as to the progress and there is an information exchange between the provider and OCA to identify any ongoing safety issue to barriers to concluding the investigation.

### **310:678-3-7. Caretaker conduct review (CCR)**

(a) **Application.** This Section applies to referrals received by the ~~Office of Client Advocacy (OCA)~~ that OCA refers to a facility for an internal caretaker conduct review (CCR) per Oklahoma Administrative Code (OAC) ~~340:2-3-35(a)(2)~~ 310:678-3-4(a)(2). Allegations of caretaker misconduct regarding children are screened by the ~~Oklahoma Department of Human Services (OKDHS) Abuse & Neglect Hotline (Hotline)~~ and referred to the appropriate facility contracting and licensing entities where the incident occurred. OCA may conduct an investigation when the OKDHS Specialized Placement Unit, OKDHS Child Care Licensing Unit, or other source, determines a pattern of misconduct exists by a person responsible for the child of interest (PRFCI) or facility administration, or facility administration fails to take appropriate corrective action. This Section does not apply to allegations involving caretaker misconduct of a Hissom class member or a vulnerable adult, other than a resident of the ~~Robert M. Greer Center (Greer)~~. OCA continues to accept and process CCRs regarding children who are in facilities not licensed by or contracted with OKDHS.

(b) **Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation, OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR when:

- (A) there is no injury or evidence the client might have been exposed to a significant risk of harm;
- (B) there is a minor physical injury and it is not a suspicious injury;
- (C) there is a serious physical injury and the known credible information makes it unlikely the serious injury was the result of abuse or neglect; or
- (D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1) of this Section, regarding vulnerable adults at OKDHS operated facilities, and at Greer, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR when the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures per ~~OAC 340:2-3-36~~ 310:678-3-5, with the exception of recording the interviews per ~~OAC 340:2-3-36(j)(1)~~ 310:678-3-5(j)(1), including:

- (1) reviewing pertinent documentation, records, and evidence collected;
- (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
- (3) obtaining written statements and conducting interviews with:
  - (A) each alleged victim;
  - (B) each eyewitness;
  - (C) other persons with knowledge relevant to the allegation; and
  - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
- (6) determining the appropriate finding(s) per ~~OAC 340:2-3-36(v)~~ 310:678-3-5(t).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe a client was the victim of caretaker misconduct resulting in a serious injury, abuse, or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on ~~Form 15GN001E, Office of Client Advocacy—Intake Referral~~ the prescribed intake referral form approved by OSDH, and the case is assigned to an OCA investigator for investigation per ~~OAC 340:2-3-35(e)~~ 310:678-3-4(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting the CCR prepares a written report. Facilities are encouraged, but not required, to use the OCA format for CCR reports. The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, based on a greater weight of the evidence standard;
- (4) a list of the involved parties, their titles and roles in the matter, whether they were interviewed and, if so, when;
- (5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;
- (6) an explanation of the basis for the finding(s);

- (7) a summary of pertinent information obtained in interviews conducted during the review;
- (8) a list of relevant documents and records reviewed;
- (9) a list of attachments to the report;
- (10) a list of areas of concern identified during the course of the investigation regarding facility or DHS practices or procedures that have implications for the safety, health, or welfare of clients, but do not rise to the level of abuse or neglect; and
- (11) either on a cover memo or at the end of the report, the date and signature of the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to OSDH ~~the advocate general~~ within 30 calendar days from the date OCA intake notified the administrator an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to OSDH ~~the advocate general~~. ~~The advocate general or designee~~ OSDH will reviews the CCR report for completeness and appropriateness of the finding. When a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation when a report indicates the need.

(h) **Final CCR report.** When a final CCR report is not submitted to OSDH ~~the advocate general~~ within 45 calendar days from the date OCA notifies the facility or provider administrator the allegation is referred for CCR, OCA notifies the appropriate state agency, office, or regulatory entity that contracts with the facility or agency for the delivery of services.

(i) **Review by OKDHS Developmental Disabilities Services (DDS) director.** Within five business days of completion of a CCR report at the ~~Robert M. Greer Center (Greer)~~, the facility administrator or designee informs the client and the client's guardian or parent of the CCR result. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies OSDH ~~the advocate general~~ in writing by email or letter. ~~The advocate general~~ OSDH will refers the matter to the OCA grievance coordinator to process for review by the OKDHS DDS director as a contested grievance per ~~OAC 340:2-3-46~~ 310:678-5-2 and ~~340:2-3-51~~ ~~(g)~~ 310:678-5-5 and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of the review. When the grievant does not concur with the proposed resolution of the applicable director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) per ~~OAC 340:2-3-62~~ and ~~340:2-3-64~~ 310:678-7-3.

(j) **OKDHS State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to subsection (i) of this Section has expired and review has not been requested, or the review was timely requested and concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs OSDH ~~the advocate general~~ in writing of:

- (A) any personnel action taken or to be taken;
- (B) any corrective action taken or to be taken; and
- (C) for each worker found to have engaged in caretaker misconduct, whether there was prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) When personnel action is involved, the State Office administrator notifies the OKDHS Human Resources Management director.

(3) When a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

### **310:678-3-8. Investigation of complaints made by foster parents or made by or on behalf of children being served by OKDHS Child Welfare Services (CWS)**

(a) **Application.** The ~~Office of Client Advocacy (OCA)~~ investigates allegations:

(1) that an employee of ~~Oklahoma Human Services (OKDHS)~~ or of a child-placing agency threatened a foster parent with removal of a child from the foster parent, harassed or refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination towards a foster parent who engaged in a protected act, per ~~Sections 10A O.S. §§ 1-9-112 and 1-9-117 of Title 10A of the Oklahoma Statutes (10A O.S. §§ 1-9-112 and 1-9-117)~~; and (2) that any OKDHS or child-placing agency employee retaliated or discriminated against a child being served by CWS for engaging in a protected act, per ~~10A O.S. § 1-9-119.1 and 10A O.S. § 1-9-120~~.

(b) **Definitions.** The following words and terms when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) "**Administrator**" with regard to a child-placing agency, means the chief administrative officer of the agency.

(2) "**Child-placing agency**" means an agency that arranges for or places a child in a foster family home, group home, adoptive home, or successful adulthood program, per 10 O.S. §§ 401 through 418.

(3) "**Discrimination**" means differential treatment by an OKDHS or child-placing agency employee of similarly situated foster parents or similarly situated children being served by CWS that in reprisal for engaging in a protected activity.

(4) "**Harassment**" means a knowing and willful pattern of conduct, statements, or behaviors that serve no legitimate purpose, directed at a foster parent or child being served by CWS that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(5) "**Protected activity**" means a foster parent or child being served by CWS engaged in:

(A) filing a grievance with OKDHS or the Oklahoma Commission on Children and Youth

(OCCY) Office of Juvenile System Oversight (OJSO), or with a child-placing agency, per 10A O.S. § 1-9-120;

(B) providing information regarding foster care services to any state official or OKDHS employee; or

(C) testifying, assisting, or otherwise participating in an investigation, proceeding, or hearing against OKDHS or a child-placing agency.

(6) "**Retaliation**" means:

(A) with regard to a child being served by CWS, in reprisal for the child engaging in a protected activity, an OKDHS or child-placing agency employee took an adverse action against the child including, but not limited to, punishment, interference, or coercion; or

(B) with regard to a foster parent, in reprisal for the foster parent engaging in a protected activity, an OKDHS or a child-placing agency employee:

(i) threatened a foster parent with a child's removal from the foster parent's care;

(ii) refused or failed to place a child in a licensed or certified foster home; or

(iii) disrupted a child placement.

(c) **Scope.** A foster parent or a child being served by CWS has the right, without fear of reprisal or discrimination, to lodge concerns and complaints with respect to the provision of foster care services to OJSO. OJSO forwards complaints to OCA. OCA determines if foster parent or child being served by CWS complaints meet criteria for a formal investigation. OCA:

(1) initiates investigations that meet the criteria, per ~~Oklahoma Administrative Code (OAC) 340:2-3-38(a)~~ (a) of this Section; and

(2) forwards discrimination allegations to the OKDHS Office for Civil Rights when the alleged discrimination includes actions or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law.

(d) **Exclusions.** The provisions of this Section do not apply to:

(1) a complaint by a foster parent or by a child being served by CWS regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent or child being

served by CWS of a law, rule, or contract provision, or an action taken by OKDHS or a child-placing agency in conformity with the result of such proceedings;

(2) allegations of acts of retaliation, discrimination, or harassment that occurred more than one year prior to the date of the foster parent or child being served by CWS complaint; or

(3) allegations of a pattern of retaliation, discrimination, or harassment, the last incident that occurred more than one year after the foster parent or child being served by CWS participated in a protected activity.

(e) **Protections for foster parents filing complaints in good faith.** 10A O.S. § 1-9-117 provides that any foster parent who has reasonable cause to believe he or she was threatened with removal of a foster child, refused placement of a child, or had a placement disrupted in retaliation, discrimination, or harassment by an OKDHS or a child-placing agency employee, as outlined in (c) of this Section, may file a complaint with OJSO. The law provides that persons making a report in good faith under this Section may not be adversely affected solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents or children being served by CWS may file complaints by calling OCA or using the OCCY website at okfosterparentvoices.org or okfosteryouthmatters.org.

(g) **Confidentiality.** OCA maintains confidentiality regarding the reporter's identity. OCA must prepare and maintain written records from the reporting source including the:

(1) names and addresses of the child being served by CWS and the person(s) responsible for the child's welfare;

(2) nature of the complaint; and

(3) names of the persons or agencies responsible for the allegations contained in the complaint.

(h) **Prohibition against interference.** An OKDHS employee who interferes with a foster parent's or child being served by CWS's grievance rights or an OCA investigation may be subject to administrative action for misconduct per OKDHS personnel rules relating to cause for disciplinary action.

(i) **Initiation of OCA investigation.** Upon disposition of a report of retaliation, discrimination, or harassment against a foster parent or child being served by CWS, OCA assigns an OCA investigator to investigate the allegations per this Section. The OCA investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees or agents in an OCA foster parent or child being served by CWS investigation are listed in (1) through (7) of this subsection. OKDHS employees or agents:

(1) make themselves available for interviews and accommodate the OCA investigator in scheduling interviews;

(2) provide pertinent information and respond fully and truthfully to questions asked;

(3) may submit written statements relating to the events in question in addition to being interviewed;

(4) may seek advice concerning their rights and responsibilities from other parties within, or outside of OKDHS;

(5) prepare written statements or reports relevant to the investigation upon request;

(6) who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions; and

(7) when interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** At all times, OCA is granted access to any foster home or facility approved, authorized, or funded by OKDHS, or a child-placing agency.

(l) **Investigation procedures.** Investigations are conducted, ~~per~~ in accordance with OAC 340:2-3-36, 310:678-3-5 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned OCA investigator notifies the applicable administrator or State Office administrator of the investigation and arranges for



document production, site visits, and interviews. The administrator or State Office administrator who employed an accused employee at the time of an alleged incident promptly informs the accused employee of:

- (A) the OCA investigator's name and phone numbers;
- (B) the investigative process;
- (C) his or her rights and responsibilities relating to the investigation described in (j) of this Section, ~~using Form 15IV006E, Investigations of Foster Parent Retaliation Complaints—Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided by the OCA investigator;~~ and
- (D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and State Office administrators cooperate and facilitate with the OCA investigation by:

- (A) providing access to requested information;
- (B) producing relevant documents, files, and records;
- (C) accompanying the OCA investigator on foster home visits, when requested by OCA; and
- (D) providing access to accused employees and others who have knowledge of relevant information.

(3) **OCA findings regarding foster parent or child being served by CWS retaliation, discrimination, or harassment and completion timeframes.** The OCA investigator conducts a prompt and thorough investigation within 60-calendar days from the date of the referral, stating one of the following findings.

- (A) **"Substantiated"** means OCA determined, based on the preponderance of the evidence that foster parent retaliation, discrimination, or harassment occurred or that a child being served by CWS was subject to retaliation or discrimination.
- (B) **"Unsubstantiated"** means OCA determined, based on the preponderance of the evidence, that insufficient evidence exists to determine foster parent retaliation, discrimination, or harassment occurred or that a child being served by CWS was subject to retaliation or discrimination.

(4) **The written investigation report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written report containing:

- (A) the allegations investigated, including the date, time, and location of the alleged incident, the date the allegation was reported to OCA, the OCA case number, and the assigned OCA investigator;
- (B) a list of the involved parties, and their titles and roles in the alleged incident;
- (C) the applicable definition of the type of conduct at issue, such as retaliation, discrimination, or harassment, or any combinations thereof;
- (D) if the foster parent or child being served by CWS engaged in a protected activity listed in (c)(2) of this Section and, if so, a description of the activity;
- (E) the findings, per (l)(3) of this Section;
- (F) an explanation of the basis for the finding;
- (G) a summary, in cases involving a substantiated finding, of each interview conducted during the investigation, including the date and location of the interview;
- (H) areas of concern identified during the investigation regarding OKDHS or child-placing agency practices or procedures;
- (I) a list of documents and records reviewed during the investigation; and
- (J) a list of attachments submitted with the final report.

(5) **OCA investigative report dissemination.**

- (A) In cases involving allegations against an OKDHS employee, OSDH will ~~the advocate general~~ submits a copy of the final OCA investigation report to the OKDHS Director ~~and applicable State Office administrators.~~

(B) In cases involving a child-placing agency employee, ~~the advocate general~~ OSDH will send a letter summarizing the allegation and the OCA finding to the agency administrator and send a copy of the report to the appropriate State Office administrator. When the child-placing agency administrator is the subject of the investigation, the letter summarizing the allegation and the OCA finding is sent to the agency's board of directors.

(C) OCA sends the foster parent or child being served by CWS and each accused OKDHS employee a letter summarizing the allegation and the OCA finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions, per 10A O.S. § 1-9-112 and 43A O.S. § 10-110.

(m) **Request for reconsideration by OSDH ~~the advocate general~~.** Within 15-calendar days of receipt of the final OCA investigative report or summary, the CWS State Office administrator or the administrator's designee, the child-placing agency administrator, or the employee may request reconsideration by OSDH ~~the advocate general~~.

(n) **OKDHS Director's request for reconsideration by OSDH ~~the advocate general~~.** Within 30-calendar days of receipt of the final OCA investigative report, the OKDHS Director may request reconsideration by OSDH ~~the advocate general~~.

(o) **Response to a substantiated finding by a State Office administrator or child-placing agency administrator.**

(1) When a State Office administrator receives a copy of an OCA investigative report containing a substantiated finding and reconsideration was not timely requested within 30-calendar days of receipt of the OCA report, the State Office administrator notifies OSDH ~~the advocate general~~ in writing of any personnel action taken, or to be taken, with regard to the employee, or any corrective action taken, or to be taken, regarding the areas of concern noted in the OCA report.

(2) When the OKDHS Director refers the matter to OSDH ~~the advocate general~~ for reconsideration, the State Office administrator's response to OSDH ~~the advocate general~~ regarding corrective action is due within 30-calendar days of OSDH's ~~the advocate general's~~ final finding on reconsideration.

(3) When a child-placing agency administrator receives a letter summarizing the allegations and the OCA finding against a child-placing agency employee, the child-placing agency administrator notifies OSDH ~~the advocate general~~ in writing within 30-calendar days of the final report of any personnel action taken, or to be taken, with regard to each employee named in the report, and of the status of areas of concern noted in the OCA report.

### **310:678-3-9. Program Review process for substantiated child abuse or neglect findings in OCA ~~Office of Client Advocacy~~ investigations**

(a) **Purpose.** The ~~Office of Client Advocacy~~ (OCA) program review process serves the following purposes:

(1) per the 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, ~~Oklahoma Human Services (OKDHS)~~ the State of Oklahoma is required to provide persons who disagree with a substantiated finding of child abuse or neglect with a procedure for appealing and responding to appeals of those findings;

(2) serves as a quality assurance mechanism to assess findings compliance with ~~Office of Client Advocacy~~ (OCA) standards, per ~~Oklahoma Administrative Code (OAC) 340:2-3-36~~ 310:678-3-5; and

(3) provides a procedure for notice and an opportunity for review to an individual and, if the individual is an employee of a facility licensed, certified, operated, or contracted by or with the ~~Office of Juvenile Affairs (OJA)~~, to the facility prior to recording an individual in the Restricted Registry, per ~~Section 10 O.S. § 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 405.3)~~.

(b) **Eligibility criteria.** An individual may request consideration through the program review process when:

(1) the person is an alleged perpetrator in an investigation involving abuse or neglect allegations; and

- (2) the investigation results in a substantiated finding regarding the alleged perpetrator; and
- (3) there is no other court action or court order in regard to the alleged child abuse or neglect including pending or completed:

- (A) protective order hearings;
- (B) civil actions for monetary compensation; or
- (C) criminal court proceedings.

(c) **Procedures for the alleged perpetrator program review process.** The procedures for the alleged perpetrator program review process are outlined in (1) through (4) of this subsection.

(1) **Notification to alleged perpetrator.** Within ten (10) calendar days of ~~Upon~~ substantiating abuse, neglect, or both, the OCA social services inspector ~~notifies~~ shall provide the alleged perpetrator ~~of with~~ the finding by mailing ~~Forms 04KI077E, the Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, and Request for Program Review, provided the criteria in OAC 340:2-3-39 is met~~ via certified mail and regular mail to the last known address. ~~Forms 04KI077E and 04KI079E are:~~

~~(A) mailed by certified mail and regular mail within 10 calendar days of abuse or neglect substantiation; and The Notification Concerning Finding(s) of Child Abuse/Neglect shall inform the alleged perpetrator of the following information:~~

- ~~(i) any substantiated child abuse or neglect finding in the investigation;~~
- ~~(ii) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and~~
- ~~(iii) demographic information.~~

~~(B) mailed to the alleged perpetrator's last known address.~~

~~(i) Form 04KI077E informs the alleged perpetrator of:~~

- ~~(I) any substantiated child abuse or neglect finding in the investigation;~~
- ~~(II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and~~
- ~~(III) demographic information.~~

~~(ii) Form 04KI079E specifies:~~

~~(I) the alleged perpetrator may request a program review by mailing a request to the OCA program review committee within 15 calendar days from the postmark on the envelope containing Form 04KI079E;~~

~~(II) the alleged perpetrator has the right to provide additional information through written statements that must be submitted at the same time the request for program review is made;~~

~~(III) failure to submit the program review request within 15 calendar days from the postmark on the envelope containing Form 04KI079E results in the finding becoming final, and also specifies that the alleged perpetrator waives any right to refute this finding in the future, unless good cause is established; and~~

~~(IV) that verification of legal representation must be established when the alleged perpetrator requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.~~

~~The Request for Program Review shall specify the following information:~~

~~(i) the alleged perpetrator may request a program review by mailing a request to the OCA program review committee within fifteen (15) calendar days from the postmark on the envelope containing the Notification Concerning Finding(s) of Child Abuse/Neglect;~~

~~(ii) the alleged perpetrator has the right to provide additional information through written statements that must be submitted at the same time the request for program review is made;~~

~~(iii) failure to submit the program review request within fifteen (15) calendar days from the postmark on the envelope containing the Notification Concerning Finding(s) of Abuse/Neglect results in the finding becoming final, and also specifies that the alleged~~

perpetrator waives any right to refute this finding in the future, unless good cause is established; and

(iv) that verification of legal representation must be established when the alleged perpetrator requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.

(2) **Good cause conditions.** an alleged perpetrator is granted a review despite failure to make a timely response, provided good cause is established, including, but not limited to, severe illness or other disabling condition.

(3) **Review Procedure.** Within 60-calendar days following a review request acceptance, or a late review request when good cause was established, the OCA program review committee determines whether the substantiated child abuse or neglect finding meets substantiation protocol, per OAC ~~340:2-3-2~~ 310:678-1-2. No individual with direct decision making authority regarding a case being reviewed is authorized to vote to ensure that there is no conflict of interest.

(A) The decision to uphold, modify, or reverse the original abuse or neglect finding is determined by reviewing:

(i) ~~Form 04KI003E, Report to District Attorney, including attachments, and relevant OCA information the entire case record;~~ and

(ii) all written documents submitted to the OCA program review committee.

(B) When the program review committee determines the finding failed to meet substantiation criteria per OAC ~~340:2-3-36~~, the committee:

(i) determines whether the preliminary decision was based on a lack of credible evidence to support the child abuse or neglect allegations; or

(ii) determines whether the preliminary decision is based on the OCA social services inspector's lack of documentation; and

(I) when a lack of documentation exists, the program review committee sends notification to the programs administrator, programs manager and OCA social services inspector that information is missing. The program review committee requests the information be added to the report or scanned into On Base;

(II) after the program review committee's notification is received, the programs manager reopens and reassigns the investigation;

(III) the assigned OCA social services inspector adds the additional information to the report within 15-calendar days of the reassignment and sends notification to the program review committee upon completion; and

(IV) the program review committee reconsiders the review request with the additional information and modifies or upholds the finding as appropriate; and

(iii) modifies the finding, when appropriate, in KIDS.

(I) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the program review committee's chairperson ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added along with the substantiated finding; and

(II) ~~Forms 04KI077E and Form 04KI079E~~ The Notification Concerning Finding(s) of Abuse/Neglect and Request for Program Review are mailed with the corrected allegations and findings.

(C) Within 60-calendar days following the acceptance of the review request, the program review committee, provides written notification to the:

(i) alleged perpetrator;

ad

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

(vi) district attorney's office in the county where the finding originated;

- (vii) Specialized Placement and Partnership Unit, when applicable;
- (viii) Child Care Services (CCS), when applicable;
- (ix) ~~Office of Juvenile Affairs (OJA)~~, when applicable; and
- (x) facility or agency provider administrator.

**(4) Notification of Child Care Services (CCS) of a PRFC's substantiated finding of heinous and shocking abuse.**

- (A) OCA is responsible for notifying CCS upon completion of a program review when a finding of heinous and shocking abuse is substantiated.
- (B) CCS notifies a ~~childcare~~ ~~child-care~~ facility owner or operator and the ~~childcare~~ ~~child-care~~ resource and referral organization in writing immediately or not later than one-business day after a finding of heinous and shocking abuse is substantiated on a PRFC by DHS, per 10 O.S. § 406.

**(d) Procedures for the OJA facility program review.** The procedures for the facility program review process are outlined in (1) and (2) of this subsection.

**(1) Notification to facility.** Within 10-calendar days of a facility employee's substantiation of abuse, neglect, or both, the facility is notified of the finding. The notification informs the facility:

- (A) of the substantiated finding;
- (B) of the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party;
- (C) of the demographic information;
- (D) that a program review may be requested by notifying the OCA Program Review Committee within 15-calendar days of the date the facility was notified of the substantiated findings;
- (E) that additional information for consideration by the OCA Program Review Committee may be provided with the request for a program review; and
- (F) that failure to request a program review in a timely manner may result in the finding becoming final and waives any right for the facility to request consideration of the finding in the future.

**(2) Review procedure.** The review procedures for a request for program review by an OJA facility follow the procedures found in (c) of this Section.

**310:678-3-10. Reconsideration process for substantiated findings of vulnerable adult maltreatment in ~~Office of Client Advocacy (OCA)~~ investigations and OKDHS Community Services Worker Registry (CSWR) procedures**

**(a) Notice of Reconsideration process for substantiated findings of vulnerable adult maltreatment by vulnerable adult caretakers (VAC) not eligible for CSWR placement.**

- (1) The OCA administrative programs officer (APO) or designee sends the VAC a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of approval of a substantiated investigation finding by the OCA programs manager or supervisor.
- (2) The notification of findings informs the VAC of:
  - (A) any substantiated vulnerable adult abuse or neglect findings in the investigation;
  - (B) the abuse or neglect referral, allegations, and findings dates;
  - (C) demographic Information; and
  - (D) instructions regarding the request for reconsideration, specifying that:
    - (i) the VAC may request reconsideration by mailing a request to the OCA Reconsideration Committee within 20-calendar days of the date the notification of findings was sent;
    - (ii) the VAC has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the notification of findings.
    - (iii) if the VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and

(iv) failure to submit a request for reconsideration within 20-calendar days of the date the notification of findings was sent may result in the finding becoming final. In this case, the VAC may only contest the finding upon a showing of good cause.

(3) The notification of findings does not include the reporting party's identity.

**(b) Review procedure for substantiated findings of vulnerable adult maltreatment by VAC not eligible for CSWR placement.**

(1) When the VAC requests reconsideration, within 45-calendar days of accepting the request, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a preponderance of the evidence and meets the relevant definition, per ~~Section 43A O.S. § 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103).~~

(2) If the VAC does not request reconsideration, within 45-calendar days of the date the notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested:

(A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

(i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, Adult Protective Services (APS) history, criminal history, and referral history; and

(ii) any written documents submitted by the VAC;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves;

(C) the OCA Reconsideration Committee emails the APO its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision, the APO or designee provides notification to the:

(i) VAC;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

(vi) district attorney's office in the county where the finding originated;

(vii) OKDHS Developmental Disabilities Services (DDS), when applicable;

(viii) OKDHS Aging Services (AS), when applicable;

(ix) facility administrator; and

(x) guardian for the vulnerable adult, when applicable.

**(c) Notice of reconsideration process for substantiated findings of vulnerable adult maltreatment by community services worker (CSW)s eligible for CSWR placement.**

(1) The OCA APO or designee sends the CSW a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of a substantiated investigation finding approval by the OCA programs manager or supervisor.

(2) The CSW may be added to the CSWR when ~~Oklahoma Human Services (OKDHS)~~ sent proper notice:

(A) to his or her last known address by certified mail, return receipt requested, and regular mail;

(B) to his or her email as provided to OKDHS; or

(C) as provided in (1) of this Section.

(3) The notice informs the CSW of:

(A) the dates of the abuse or neglect referral, allegation, and finding; and

- (B) instructions regarding the request for reconsideration, specifying that:
  - (i) he or she may request reconsideration of the investigative findings by submitting a detailed written statement with the request within 20-calendar days of the mailing date of the notice;
  - (ii) he or she has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the findings letter;
  - (iii) that when a VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and
  - (iv) absent good cause shown, failure by the CSW to submit a request for reconsideration within 20-calendar days of the mailing date of the notice:
    - (I) may result in the finding becoming final;
    - (II) waives the right to further administrative or judicial review; and
    - (III) authorizes entry of his or her name in the CSWR and disclosure, per ~~Oklahoma Administrative Code (OAC) 340:100-3-39~~, to any person requesting such information.

(4) The notice does not contain the reporting party's identity.

**(d) Review procedure for substantiated findings of vulnerable adult maltreatment by CSWs eligible for CSWR placement.**

(1) If the CSW requests reconsideration, within 20-calendar days of the date the notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. §10-103.

(2) If the CSW does not request reconsideration, within 20-calendar days of the date the notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested:

(A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

- (i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, APS history, criminal history, and referral history; and
- (ii) any written documents submitted by the CSW;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves;

(C) the OCA Reconsideration Committee informs the APO by email of its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision the APO or designee provides notification to the:

- (i) CSW;
- (ii) advocate general;
- (iii) programs administrator;
- (iv) programs manager;
- (v) OCA social services inspector;
- (vi) district attorney's office in the county where the finding originated;
- (vii) DDS, when applicable;
- (viii) child care services (CCS), when applicable;
- (ix) AS, when applicable;
- (x) facility administrator; and
- (xi) guardian for the vulnerable adult, when applicable.

**(e) Upheld substantiated findings for CSWs eligible for CSWR placement.**

(1) When the OCA Reconsideration Committee makes a determination to uphold a substantiated finding of maltreatment of a vulnerable adult by a CSW eligible for CSWR placement, the OCA Reconsideration Committee immediately conducts a CSWR review to determine potential registry placement based on criteria in (A) and (B) of this paragraph. Whether the CSW's wrongful conduct:

- (A) results in, or creates a substantial risk of serious physical or emotional injury to a service recipient; or
- (B) was the result of intentional, willful, or reckless disregard for the service recipient's health or safety.

(2) When the OCA Reconsideration Committee upholds a substantiated finding under a preponderance of the evidence standard, but the CSW's conduct does not meet the criteria required for potential registry placement, the committee chair notifies the APO.

(3) The APO or designee provides written notification of the reconsideration determination within 15-calendar days of the decision. This time period runs concurrent with the 15-calendar day deadline for sending notice of the reconsideration results. The notice is provided to the:

- (A) CSW;
- (B) advocate general;
- (C) programs administrator;
- (D) programs manager;
- (E) OCA social services inspector;
- (F) district attorney's office in the county where the finding originated;
- (G) DDS, when applicable;
- (H) CCS, when applicable;
- (I) AS, when applicable;
- (J) facility administrator; and
- (K) guardian for the vulnerable adult, if applicable.

(4) When the registry review affirms or modifies the findings and determines the CSW warrants potential placement on the CSWR, the OCA APO notifies OKDHS Legal Services (LS).

(5) OKDHS LS has prosecutorial discretion and determines whether to pursue CSWR placement.

(A) When OKDHS LS decides not to pursue CSWR placement, LS staff sends a Determination Letter to the CSW, copied to the OCA APO, and OCA takes no further action.

(B) When OKDHS LS staff decides to pursue CSWR placement, LS staff notifies the OCA APO or designee. The APO then notifies the CSW, as provided in (c)(2) of this Section that:

(i) if the CSW is aggrieved by the decision, an administrative hearing may be requested in writing via mail sent to OKDHS within 20-calendar days of the date the reconsideration decision was sent; and

(ii) absent a finding of good cause by an administrative law judge (ALJ), the failure to timely request a hearing:

- (I) results in the reconsideration decision becoming final;
- (II) waives any right to an administrative hearing or judicial review; and
- (III) authorizes entry of the CSW's name in the CSWR, and disclosure to any person requesting the information per this subsection.

**(f) Hearing Notice.** When the CSW submits a timely written request for hearing, or upon the ALJ finding of good cause for a request that was not timely, OKDHS LS sends a hearing notice as provided in (c)(2) of this Section within 10-business days of receipt of the request. The hearing notice is dated and states:

- (1) the administrative law judge's (ALJ) name;
- (2) the hearing date and time;
- (3) the street and city address and room number where the hearing is scheduled;
- (4) that his or her failure to attend the hearing, absent a finding of good cause by an ALJ:
  - (A) waives any right to either an administrative hearing or judicial review; and



- (B) authorizes entry of his or her name in the CSWR, and disclosure to any person requesting the information, per OAC 340:100-3-39;
  - (5) the CSW may be represented by an attorney;
  - (6) requests by the CSW or his or her attorney for witnesses or records, relevant to the proceeding must be directed to OKDHS LS staff, who forward requests to the relevant persons, OKDHS programs, and provider, per OAC 340:100-3-39; and
  - (7) a final proposed list of evidence, witnesses, and summary of anticipated testimony must be submitted to the administrative law judge designated on the notice of hearing at least 10-calendar days prior to the hearing.
- (g) **Hearing.**
- (1) The hearing is:
    - (A) held no earlier than 15-calendar days and no later than 90-calendar days after the date the request for hearing was received by OKDHS. Upon request by the CSW or OKDHS, and for good cause shown, a hearing may be held more than 90-calendar days after the date the request for hearing was received by OKDHS, when approved by the ALJ;
    - (B) closed and all information presented therein is confidential; and
    - (C) audio recorded.
  - (2) The CSW or his or her attorney is allowed to cross-examine witnesses called by the OKDHS attorney, who is allowed to cross-examine any witnesses called by the CSW or his or her attorney.
  - (3) The ALJ has final decision on the specific persons allowed to testify, the scope of direct testimony and cross-examination, and admissibility of exhibits, except all OKDHS and provider records pertaining to a finding of confirmed maltreatment are admissible.
  - (4) The formal rules of evidence and procedure under Oklahoma law are not controlling, the burden of persuasion and initially coming forward with evidence is on OKDHS through its attorney, and the standard of proof is clear and convincing evidence.
- (h) **Hearing decision.** A written decision by the ALJ:
- (1) is issued placing the CSW on the CSWR when the ALJ finds by clear and convincing evidence that maltreatment occurred. Despite a finding by the ALJ that maltreatment occurred, the CSW is not added to the CSWR when the ALJ makes a finding that the ~~the~~ act or omission that is the basis for the confirmed finding either:
    - (A) did not result in, or create a substantial risk of, serious physical or emotional injury to a vulnerable adult; or
    - (B) was not the result of intentional, willful, or reckless disregard for the service recipient's health or safety;
  - (2) is issued denying placement of the CSW on the CSWR if the ALJ finds that there is not clear and convincing evidence that maltreatment occurred;
  - (3) contains findings of fact and conclusions of law;
  - (4) contains appeal rights, the action required to appeal, and the time within which such actions must be taken;
  - (5) is issued within 30-calendar days of the hearing; and
  - (6) is sent to the CSW by certified mail, return receipt requested or email as applicable no later than the third business day following the date the decision is signed by the ALJ.
- (i) **Appeal rights.** A CSW aggrieved by a decision of the ALJ may seek judicial review of the decision. A judicial review, based solely on the administrative record, may be initiated by filing a petition in the Oklahoma district court with jurisdiction within 30-calendar days from the date the decision is signed by the administrative law judge, per 56 O.S. § 1025.3 and 75 O.S. § 318. A copy of the petition and summons filed in district court must be served on OKDHS LS.
- (j) **Request for CSWR removal.** A registrant may request removal after 60 months from the date of placement on the CSWR. A request for removal from the CSWR is forwarded to the OCA Reconsideration Committee. The OCA Reconsideration Committee makes a determination within 30-calendar days of receipt of the CSW's request.

- (1) Criteria considered for removal includes, but are not limited to:
  - (A) the individual's age at the time of the offense(s);
  - (B) the number and types of maltreatment incidents for which the individual has findings made against them;
  - (C) the circumstances surrounding the maltreatment incident demonstrating willful intent;
  - (D) the likelihood the individual will maltreat again;
  - (E) other documentation submitted indicating the vulnerable adult's health, safety, and well-being are, or are not endangered;
  - (F) a current criminal background review, conducted within 30-calendar days of the date of the removal request;
  - (G) work and training histories, since registration;
  - (H) a personal statement of rehabilitative efforts; and
  - (I) the length of time on the CSWR.
- (2) A decision to remove a registrant from the CSWR is based on an OCA Reconsideration Committee majority decision.
- (3) OCA Reconsideration Committee staff notifies the registrant of the OCA Reconsideration Committee decision.

(k) **Service.** If ~~Form 15IV004E~~, the prescribed Address Information Notice Form is not obtained during the investigative process found in ~~OAC 340:2-3-36.1~~ 310:678-3-5. OKDHS may obtain service on a CSW by any means authorized by the Rules for the District Courts of Oklahoma as found in ~~Title 12 of the Oklahoma Statutes (12 O.S. § Rule 1, et. seq.)~~

## SUBCHAPTER 5. GRIEVANCES

### **310:678-5-1. Grievance system protocols**

#### **(a) Legal authority, scope, and purpose.**

##### **(1) Legal authority.**

(A) Per ~~Sections 1-9-112 and 1-9-120 of Title 10A of the Oklahoma Statutes (10A O.S. §§ 1-9-112 and 1-9-120)~~, the Office of Client Advocacy (OCA) established and maintains a fair, simple, and expeditious grievance system for resolution of grievances of:

- (i) all children in the custody of ~~Oklahoma Human Services (OKDHS)~~ custody regarding:
  - (I) the substance or application of any written or unwritten OKDHS policy or rule by OKDHS or an OKDHS agent; or
  - (II) any decision or action by an employee or agent of OKDHS, or of any child in the custody of OKDHS;

(ii) foster parents relating to the provision of foster care services, per 10A O.S. §§ 1-9-112 and 1-9-117;

(iii) all persons receiving services from OKDHS Developmental Disabilities Services (DDS); or

(iv) any child being served by OKDHS Child Welfare Services (CWS), per 10A O.S. § 1-9-119.1.

(B) 10 O.S. § 1415.1(A)(2) requires that OKDHS establish an ombudsman program for each OKDHS-operated institution and residential facility for individuals with intellectual disabilities that include an appeals procedure for the resolution of grievances and complaints of residents, their parents, and court-appointed guardians. OKDHS conferred this responsibility on OCA.

(C) OKDHS conferred OCA with the responsibility for grievance systems for other clients listed in (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (G) of this paragraph, collectively referred to as the "client" throughout this Section and ~~Oklahoma Administrative Code (OAC) 340:2-3-46~~ 310:678-5-2. Further grievance details for:

(A) any child served by OKDHS CWS is found at: ~~OAC 340:2-3-47~~ 310:678-5-3;

- (B) OKDHS-approved foster parents are found at: OAC ~~340:2-3-50~~310:678-5-4;
- (C) Robert M. Greer Center (Greer) residents are found at: OAC ~~340:2-3-51~~310:678-5-5;
- (D) Hissom Class Members and persons who are transitioned to the community from state-run facilities are found at OAC: ~~340:2-3-52~~310:678-5-6;
- (E) DDS clients receiving community-based services from DDS are found at: OAC ~~340:2-3-53~~310:678-5-7;
- (F) residents of group homes for persons with developmental or physical disabilities subject to 10 O.S. §§ 1430.1 et seq. are found at: OAC ~~340:2-3-54~~310:678-5-8; and
- (G) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which another grievance system within OKDHS does not exist are found at: OAC ~~340:2-3-55~~310:678-5-9.

(3) **Purpose.** The purpose of OCA grievance policies is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures where clients may obtain a thorough review, fair consideration, and correction, when appropriate. These policies also ensure that persons filing grievances are free from reprisal or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance systems subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances; however, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most are resolved within the relationship between clients and OKDHS, providers, and facility staff. Efforts are made to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client chooses to proceed directly to the grievance process.

(b) **Definitions.** In addition to the definitions in OAC ~~340:2-3-23~~310:678-1-2, the following words and terms when used in Subchapter 5, OAC ~~340:2-3-45 through 340:2-3-55~~, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **"Area manager"** means a manager of one of the three service delivery areas, designated by OKDHS DDS.
- (2) **"Business day"** means Monday through Friday, not including federal or state holidays.
- (3) **"Child-placing agency"** means an agency that arranges for, or places a child in a foster family home, group home, adoptive home, or successful adulthood program, per 10A O.S. § 1-1-105.
- (4) **"Client"** means any of the individuals listed in (a) of this Section, on whose behalf OCA maintains a grievance system.
- (5) **"Complaint"** means a report communicating a grievance, concern, or perceived harm, submitted by phone, email, or in writing by the foster parent or child being served by CWS to the Oklahoma Commission on Children and Youth Office of Juvenile System Oversight (OJSO). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.
- (6) **"Contested grievance"** means a grievance that was not resolved at the local level (first and second levels), and at the request of the grievant or decision-maker, is submitted to a higher authority for response.
- (7) **"Decision-maker"** means the person with authority to decide to accept a proposed resolution at each level of the grievance process set forth in OAC ~~340:2-3-45 through 340:2-3-55~~ Subchapter 5; typically, the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves, such as young children and persons with severe cognitive limitations, the decision-maker is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision.
  - (A) With regard to minors, the decision-maker includes, but is not be limited to, a parent, guardian, guardian ad litem, foster parent, or court-appointed legal custodian.
  - (B) With regard to adult DDS clients, the decision-maker may be a guardian or the client's personal support team.

(C) When the grievant is not the decision-maker, the local grievance coordinator (LGC) does not inform the grievant when the proposed resolution is issued or if it was accepted or rejected.

The decision-maker may share this information with the person grieving on behalf of the client.

(8) "**Deputy director**" means a director of one of the five regional delivery areas designated by OKDHS CWS.

(9) "**District director**" means a director of a district within one of the regional delivery areas, designated by OKDHS CWS.

(10) "**Due date**" means the date a response or action is required, such as the date a respondent must respond to a grievance. When calculating the due date, the first day of the period computed is not included and only business days are included. When the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(11) "**Email**" communication with OCA or with the advocate general means an email sent to the email address: [oca-grievances@okdhs.org](mailto:oca-grievances@okdhs.org) or [oca.grievances@health.ok.gov](mailto:oca.grievances@health.ok.gov).

(12) "**Grievance**" means a problem or concern, including a complaint of unfair treatment, that an individual needs assistance in resolving.

(13) "**Grievant**" means a client or the person who files a grievance on behalf of a client.

(14) "**Local grievance coordinator**" or "**LGC**" means regarding:

(A) children who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) DDS Greer clients or the OCA advocate assigned to the facility;

(C) DDS clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(D) other DDS clients, the applicable DDS area manager, or the area manager's designee.

(15) "**OCA grievance liaison**" means the individual(s) designated by the advocate general to coordinate and monitor contested grievances and local grievance programs.

(16) "**Respondent**" means the person at each level in the grievance process, who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievances: general principles.**

(1) An unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the client's request, the OKDHS employee or a facility or provider employee prepares a written statement of the client's complaint or refers him or her to the local grievance coordinator for assistance.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:

(i) the substance or application of policy, rule, or regulation, written or unwritten, of a facility, agency, or provider that contracts with OKDHS or a child-placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, agency, or provider, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance includes:

(i) the substance or application of policy, rule, or regulation, of OKDHS or a child-placing agency;

(ii) a decision, act, or omission of an employee; and includes case managers, child welfare specialists, and county office employees; or

(iii) a facility grievance filed by a Greer resident.

(2) **Summary dispositions.** When a grievance is submitted and it falls into subparagraphs (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client, as needed, in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. When it is determined the client is asking to grieve a problem or concern covered by any of the categories in (A) through (K) of this paragraph, the LGC informs the client why the

grievance is not being processed, using the applicable prescribed form(s) approved by OSDH Forms 15GR012E, Notice of Summary Disposition of Grievance—DHS County Offices; 15GR013E, Notice of Summary Disposition of Facility Grievance; 15GR014E, Notice of Summary Disposition of Grievance—Developmental Disabilities Services (DDS) Clients; 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services (DDS) Provider Grievance; as applicable. Notices of Summary Disposition for an approved Foster Parent are located at OAC 340:2-3-50. The LGC writes the reason on the ~~bottom of Form 15GR001P (paper version) or 15GR001E (electronic version),~~ applicable prescribed Grievance Form approved by OSDH, and dates and signs the form. The grievance is logged ~~on Form 15GR009E, Grievance Tracking Log by the LGC.~~ The form used to notify the grievant, with a copy of the grievance form, is sent within three business days to the advocate general for review, and the original is filed in the grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. When the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. When the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing. When the complaint was filed by, or on behalf of a child being served by CWS, or by a foster parent, the client is informed the grievance is not being processed and the reason why, ~~per OAC 340:2-3-47 and 340:2-3-50.~~

(A) **Untimely grievances.** A grievance not timely filed, ~~per OAC 340:2-3-45(g),~~ may be accepted and processed when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by OKDHS DDS.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability, unless authorized by law.** When a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights (OCR) and the LGC immediately forwards the grievance to the OKDHS OCR administrator and informs the grievant.

(C) **A moot problem.** A moot problem is one that was decided or settled, or one that has no practical resolution, such as a placement grievance with regard to a child who is no longer in OKDHS custody or a grievance with regard to an event that is now in the past, or when the dispute is unlikely to occur again with regard to this client.

(D) **Duplicate grievances.** A grievance that duplicates another pending grievance in the same grievance system by, or on behalf of the client involving the same incident or problem, is a duplicative grievance.

(E) **Requests that violate laws.** A grievance that requests an action that violates federal or state law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** When the grievance requires action by an individual or an entity outside of OKDHS authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant with external grievance or complaint systems that may be available.

(H) **Pending proceedings.** When the grievance involves a matter that is the subject of a court or administrative hearing decision, pending civil, criminal, or administrative proceeding, or is the subject of a pending OCA, Office of Inspector General, or CWS investigation.

(I) **Investigation findings.** Investigation results regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The fair hearing results cannot be grieved.

(K) **Frivolous grievances.** A frivolous grievance does not state a substantive complaint or problem. Before declining a grievance of this nature, the LGC contacts the grievant to inquire if he or she needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** When a grievance is submitted and it falls into an excluded category listed in (2) of this subsection, the LGC dates and signs ~~Form 15GR001P as received, the prescribed form(s) approved by OSDH~~ and notes on the form the reason he or she does not process it. The grievant is informed of the reason and decision. The grievance is ~~logged on Form 15GR009E and is~~ filed in the client's grievance file. The LGC sends copies of ~~Form 15GR001P (paper version) or 15GR0014E (electronic version)~~ the applicable prescribed Grievance Form(s) approved by OSDH and the applicable Notice of Summary Disposition to the advocate general or the advocate general's designee for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in (a) of this Section. A grievance may also be filed on a client's behalf, by any person who knows the client and is interested in his or her welfare including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, or others, including OKDHS and residential, in-home supports, and vocational provider employees.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may file a group grievance. At any time during the group grievance process, an individual grievant may withdraw. When separate grievances are filed by two or more grievants, regarding an identical complaint, the grievants' interests are identical, and the grievants do not object, a LGC can combine the grievances for processing as a group, provided this does not unduly delay the processing of a particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant. When a group grievance is filed, the LGC may ask the grievants to designate a spokesperson for the group in writing.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident including, but not limited to, facts that may constitute abuse, neglect, exploitation, or caretaker misconduct, ~~per OAC 340:2-3-2,~~ the LGC immediately reports the allegation to the Centralized Abuse and Neglect Hotline for children or to the OCA intake for vulnerable adults. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed, is held in abeyance pending the investigation's conclusion. When the grievance alleges additional facts that do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and other law enforcement agencies investigating the matter to coordinate grievance processing.

(d) **Required provider and facility grievance policies.** Every provider and facility providing services to a client living in Oklahoma, is required to operate a system for grievance resolution by clients, using policies and procedures meeting the requirements of this Part. This Section does not apply to foster parents.

(1) **LGC designation.**

(A) Every public and private facility and provider subject to, ~~OAC 340:2-3-45 through 340:2-3-55t~~ Subchapter 5 every OKDHS county office, and every DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing and email addresses of its LGC, and of changes to the information within 30-calendar days of the effective date of a change on ~~Form 15GR021E, the prescribed form regarding~~ Designation of Local Grievance Coordinator-Facilities and Provider Agencies approved by OSDH, and submit it to OCA. The OCA advocate assigned to Greer serves as the LGC for Greer. The LGC duties include:

- (i) implementing grievance policies and procedures;
- (ii) maintaining knowledge of and experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) impartial and independent administration of the grievance system;

- (iv) reporting directly to the facility administrator with regard to the LGC grievance duties and functions;
  - (v) completing the online OCA Grievance Course within 60-calendar days of LGC designation, and annually thereafter;
  - (vi) meeting the two-business day deadline on client requests regarding how to file a grievance; and
  - (vii) being accessible and available to meet with grievants in person.
- (B) Each facility, provider, OKDHS county office, and DDS area office subject to this Part displays, in a conspicuous place readily accessible to clients, a poster notifying clients of the grievance system and the name of its LGC, using the appropriate form.
- (2) **Advocate general or designee review of grievance programs.** The grievance system operated by each facility and provider, per ~~OAC 340:2-3-45 through 340:2-3-55~~ Subchapter 5, is subject to advocate general approval. Each provider and facility is required to submit its grievance policies, procedures, forms, and adopted revisions, with proof that the policies or revisions were approved by the applicable approving authority, typically the facility's board of directors, to the advocate general. Revised policies are submitted to the advocate general for approval within 30-calendar days of the provider or facility adopting the revised policy.
- (3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her grievance rights, using the applicable form. Notice is also provided to the guardian, when applicable. Hissom Class Members are provided notice, per ~~OAC 340:2-3-52310:678-5-6~~. Each provider or facility provides the required notice annually. Providers are also encouraged to provide a simplified version of their grievance policies using language appropriate to the clients' age level and cognitive functioning.
- (4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and a monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, facility files, records, and documents relating to grievance procedures and practices.
- (5) **Reporting deficiencies.** An LGC, who becomes aware of a deficiency in a grievance system including a failure to follow or implement the grievance policy, must report it to the advocate general.
- (6) **Advocate general deficiency report.** When the advocate general determines a deficiency exists in a facility's or agency provider's grievance system, the advocate general sends a deficiency report to the administrator and, when applicable, the State Office administrator.
- (7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section originate a grievance. An advocate general grievance is filed with the provider or facility administrator or with the State Office administrator and is processed as a contested grievance.
- (8) **Advocate general report.**
- (A) The advocate general may initiate an inquiry on behalf of any client served by the grievance policy in this Section regarding:
    - (i) any aspect of client care that affects the quality of the client's life;
    - (ii) the substance, application, or interpretation of a policy or rule, of a facility or agency that contracts with OKDHS or of a placement provider; or
    - (iii) any decision, behavior, or action of an employee, agent, or OKDHS contractor, or of any client residing in the same placement setting.
  - (B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.
  - (C) The advocate general issues a report that sets forth the inquiry subject matter, pertinent facts, and recommendations. An advocate general report is submitted to the provider or facility administrator, when applicable, and the State Office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining ~~Form 15GR001P~~, the applicable prescribed form(s) approved by OSDH from the LGC, filling it out, and returning it to the LGC, or to the facility or to OKDHS staff, who immediately transmits it to the LGC. ~~A grievance may also be filed using electronic Form 15GR001E at <http://www.okdhs.org>.~~ The grievant submits the completed form to the OCA grievance unit at ~~[oca.grievances@okdhs.org](mailto:oca.grievances@okdhs.org)~~ [oca.grievances@health.ok.gov](mailto:oca.grievances@health.ok.gov). Within one business day of receipt of the grievance, OCA staff assigns a grievance number, sends it to the assigned LGC, and contacts the grievant. Approved kinship or foster parents and children being served by CWS contact OJSO to initiate a grievance.

(f) **Retaliation prohibited.** A person filing a grievance may not be retaliated or discriminated against or harassed in reprisal for filing a grievance, seeking advice, or inquiring about filing a grievance. Clients are encouraged to use available grievance systems and are not discouraged from filing a grievance. Allegations of retaliation, discrimination, or harassment made by foster parents are forwarded to the foster care ombudsman or designee. All allegations, made by other clients, of retaliation, discrimination, and harassment for filing a grievance, seeking advice, or inquiry about filing a grievance are reported to the OCA grievance unit and may result in an OCA investigation or an advocate general inquiry or grievance.

(g) **Grievance time limits.** Except for DDS clients, foster parents, and children being served by CWS, in order to be processed for action and resolution, a grievance must be filed within 15-business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15-business days of the date the grievant becomes aware of, or with reasonable effort, should have become aware of a grievable issue. The LGC may extend the time limit for filing a grievance. Time limits for filing grievances for children being served by CWS and foster parent are found in OAC ~~340:2-3-47310:678-5-3~~ and ~~340:2-3-50310:678-5-4~~ respectively.

(1) Filing and other time requirements contained in this Section are counted in ~~OKDHS~~-business days unless otherwise specified. In computing any time requirement, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time requirement.

(2) When the LGC or a respondent fails to meet grievance processing time requirements without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the grievance process are delivered to the grievant in person or by mail at the grievant's last known address. A grievance is considered administratively resolved when a correctly addressed letter with proper postage is sent to the last known address of the grievant, and is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. When a grievance, timely or untimely, consists of such an allegation, the OCA Intake Unit or the Abuse and Neglect Hotline is immediately notified ~~per OAC 340:2-3-33~~.

(5) There are no time limits for grievances filed on behalf of individuals served by OKDHS DDS.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed, as well as summary information about the number, nature, and outcome of all grievances. Grievance records are kept separate and apart from other client records and files. OKDHS grievance records and files are retained per federal and state laws governing record retention and destruction.

(1) Each LGC tracks grievances as they progress through the system and logs every OCA-numbered grievance form issued on ~~Form 15GR009E~~ the prescribed grievance logging form approved by OSDH. For grievances submitted by a client, ~~Form 15GR009E~~ the prescribed grievance logging form includes the:

- (A) grievance number;
- (B) name of the grievant given the form;
- (C) date the form was submitted by the grievant;
- (D) nature and outcome of the grievance;



(E) date of final resolution; and

(F) level where it was resolved.

(2) When ~~Form 15GR001P~~the prescribed Grievance Form(s) approved by OSDH is provided to a client and not turned in, the facility tracks only the identification number copy of ~~Form 15GR001P~~the form given to the client, the name of the client to whom the form was given, and the date it was given to the client. This information is tracked on ~~Form 15GR009E~~the prescribed grievance logging form.

(3) Each LGC submits a quarterly grievance report, ~~Form 15GR010E, Quarterly Grievance Report,~~ to the advocate general no later than the 21st day following the end of each calendar quarter using the prescribed form(s) approved by OSDH. ~~Quarterly reports are submitted by mail, fax, or emailed to: oca.grievances@okdhs.org.~~ When grievance activity did not occur or was pending during a particular fiscal year quarter, the LGC indicates it on ~~Form 15GR010E~~the applicable prescribed form(s) approved by OSDH.

(4) When a grievance becomes moot at any point during the grievance, the LGC may stop the grievance process and declare the grievance, administratively resolved. The LGC informs the grievant, notes it on ~~Forms 15GR001P or 15GR001E and 15GR009E~~the prescribed Grievance Form(s) and prescribed logging form, and sends a copy of ~~Form 15GR001P or 15GR001E~~the prescribed Grievance Form(s) and prescribed logging form to OCA with the next quarterly grievance report.

(i) **Processing grievances.** After completing ~~Form 15GR001P~~the prescribed Grievance Form(s) approved by OSDH, the grievant submits the form directly to the LGC, other facility employee, lockbox, or OCA. When the grievant completes and submits ~~Form 15GR001E~~the prescribed Grievance Form(s) electronically, the OCA grievance unit submits the grievance directly to the assigned LGC within one business day. Grievances of a child being served by CWS are processed, per OAC 340:2-3-47310:678-5-3. Foster parent grievances are processed per OAC 340:2-3-50310:678-5-4.

(j) **Informal resolution of grievance.** When the LGC can promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the ~~bottom of Form 15GR001P or 15GR001E~~the applicable prescribed form approved by OSDH, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of ~~Form 15GR001P or 15GR001E~~the prescribed Grievance Form, when the grievance is not resolved to the decision-maker's satisfaction, the LGC fills out ~~Form 15GR002E,~~the prescribed Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure. For adults receiving services from DDS, the first level respondent may be the DDS case manager supervisor.

(2) The LGC completes the ~~first box in the first level section on Form 15GR002E~~prescribed LGC Worksheet, attaches corresponding ~~Form 15GR001P or 15GR001E~~Grievance Form, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three-business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five-business days of receipt of ~~Form 15GR002E~~the LGC Worksheet ~~by completing the second box in the first level section on Form 15GR002E.~~ When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant may contest the target date by proceeding to the second problem resolution level.

(4) The LGC monitors the timely response by the first level respondent. When a complete response is not timely received by the LGC, the LGC notes this on ~~Form 15GR002E~~the LGC Worksheet, and the grievance immediately proceeds to the second problem resolution level.

(5) Within three-business days of receipt of the first level response, the LGC or the LGC's designee contacts the decision-maker to inform the decision-maker of the proposed resolution, the

right to take the grievance to the second problem resolution level, and determines if the decision-maker is satisfied with the proposed resolution. The first level respondent may meet with the decision-maker with or without the LGC present. The LGC is responsible for informing the decision-maker that he or she has three-business days to accept or appeal the respondent's proposed resolution. When a decision is not communicated to the LGC within three-business days, the decision-maker is deemed to have accepted the proposed resolution.

(6) When the decision-maker is satisfied with the proposed resolution, the LGC indicates his or her acceptance on ~~Form 15GR002E~~ the LGC Worksheet, notifies those responsible for grievance resolution, and places the form in the grievance file.

(7) When the proposed resolution has been accepted by the decision-maker, but involves a future target date, the LGC monitors compliance with the target date. If the LGC determines that the resolution was not achieved by the target date, the LGC immediately reopens the grievance and processes it for the second problem resolution level.

(8) When the decision-maker does not accept the proposed resolution and elects to take the grievance to the second problem resolution level, the LGC processes the grievance for the second problem resolution level per (l) of this Section.

**(l) Second level problem resolution.**

(1) When the grievance is not resolved at the first problem resolution level, the LGC processes it per this subsection within three-business days of the grievant requesting the second problem resolution level, per (k) of this Section.

(2) The LGC ~~fills out the first box in the second level section on Form 15GR002E~~ documents the necessary information in the LGC Worksheet, ensures the corresponding ~~Form 15GR001P (paper version) or 15GR001E (electronic version)~~ Grievance Form(s) and other relevant documents are attached, and immediately submits it to the second level respondent. For facilities and providers subject to these rules, the administrator or the administrator's designee is the second level respondent. For OKDHS grievances, the OKDHS district director or the DDS area manager, as applicable, is the second level respondent. However, when the district director was the first level respondent, then the second level respondent is the applicable deputy director or the deputy director's designee. When the provider administrator or DDS area manager is the first level respondent, the second level review is bypassed and processed as a contested grievance; per OAC ~~340:2-3-46~~ 310:678-5-2.

(3) The administrator or the administrator's designee responds to the grievance within seven-business days of receipt of ~~Form 15GR002E~~ the LGC Worksheet by completing the ~~applicable box in the second level section(s)~~ applicable box in the second level section(s). When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable deputy director or the deputy director's designee.

(5) The LGC monitors the timely response by the respondent. When a complete response is not timely received by the LGC, the LGC notes this on ~~Form 15GR002E~~ the LGC Worksheet and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed, per OAC ~~340:2-3-46~~ 310:678-5-2. Contested facility grievances are processed per (m) of this Section.

(6) Within three-business days of receipt of the second level response, the LGC or the LGC's designee contacts the decision-maker to inform him or her of the proposed resolution, the right to contest the response to the grievance, and determines if the decision-maker is satisfied with the proposed resolution. The LGC is responsible for informing the decision-maker that he or she has three-business days to accept or appeal the respondent's proposed resolution. When no decision is communicated to the LGC within three-business days, the grievant is deemed to have accepted the proposed resolution.

(7) When the decision-maker is satisfied with the proposed resolution, the LGC documents the decision-maker's acceptance on ~~Form 15GR002E~~ the LGC Worksheet, notifies those responsible for resolution of the grievance, and places ~~Form 15GR002E~~ the LGC Worksheet in the grievance file.

(8) When the proposed resolution is accepted by the decision-maker, but involves a future target date, the LGC monitors compliance with the target date. When the LGC determines the resolution was not completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) When the decision-maker does not accept the proposed resolution and elects to contest the response, a contested OKDHS grievance is processed, per OAC ~~340:2-3-46~~310:678-5-2. Contested facility or provider grievances are processed per (m) of this Section.

**(m) Contested facility or provider grievances.** When the decision-maker does not accept the proposed resolution or the target date of the second level proposed resolution, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This Section does not apply to grievances of Hissom Class Members or individuals who previously resided at NORCE or SORC after November 1, 2012.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three-business days of notice that the decision-maker does not accept the proposed resolution and is contesting it.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to conduct an evidentiary hearing or hear argument. In the event the board determines evidentiary hearing evidence would assist in resolving the grievance, the board has the option of conducting an informal hearing.

(3) Within 10-business days of receipt of a contested grievance, the chair of the board of directors or the appeals committee responds by submitting a written decision to the LGC.

(4) Within three-business days of receipt of the written decision of the chair of the board of directors or the appeals committee, the LGC informs the decision-maker of the decision and provides the decision-maker with a copy of the board's decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

**(n) Fast track grievances.** When an OKDHS grievance is such that time is of the essence, with the advocate general's or his or her designee's approval, a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance, per OAC ~~340:2-3-46~~310:678-5-2. When a grievance involves a time-sensitive problem, the OCA grievance liaison may shorten the response time as circumstances warrant.

**(o) Communication with OCA.** Any notices, forms, or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or to the advocate general are submitted by email at ~~oca.grievances@okdhs.org~~oca.grievances@health.ok.gov.

**(p) Grievance training required.** LGCs are required to take the OCA-approved grievance training within 60-calendar days of their appointments, and annually thereafter.

### **310:678-5-2. Contested grievances appealed to the State Office**

**(a) Application.** This Section describes the processes for contesting the second level response to Oklahoma Human Services (OKDHS) grievances, and provider grievances of Hissom Class Members. For grievances of children being served by Child Welfare Services, refer to OAC ~~340:2-3-47~~310:678-5-3. For grievances of approved foster parents refer to Oklahoma Administrative Code (OAC) ~~340:2-3-50~~310:678-5-4.

**(b) Definitions.** The definitions in OAC ~~340:2-3-23~~10:678-1-2 and ~~340:2-3-45~~(b)310:678-5-1 apply to this Section unless the context clearly indicates otherwise.

**(c) Initiating the contested grievance.** When a decision-maker asks to appeal a grievance to the State Office administrator, within three-business days of notice of the request, the local grievance coordinator (LGC) transmits the grievance to the Office of Client Advocacy (OCA), Attention OCA

grievance liaison, with ~~Form 15GR002E~~, the prescribed Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding ~~Form 15GR001P (paper version) or 15GR001E (electronic version)~~, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When ~~Form 15GR002E~~ the LGC Worksheet is submitted to OCA, attachments are:

- (1) corresponding ~~Form 15GR001P or 15GR001E~~ Grievance Form(s);
- (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and
- (3) any written rule, policy, procedure, regulation, or other information relevant to the grievance subject matter.

(e) **OCA grievance processing.** Within three-business days following receipt of an OCA contested grievance, the OCA grievance liaison reviews the contested grievance and accompanying documentation and determines if additional information is necessary for disposition of the appeal. When information is missing, the OCA grievance liaison contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** When OCA determines the subject matter of a grievance falls in one of the categories listed in ~~OAC 340:2-3-45(e)(2)~~ 310:678-5-1(c)(2), the OCA grievance liaison returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within three-business days following receipt of the letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to State Office administrator.** Within three-business days following receipt of an OCA contested grievance and all documents required by (d) of this Section, the advocate general or the advocate general's designee prepares and sends ~~Form 15GR011E~~, the prescribed Contested Grievance Transmittal Form approved by OSDH, to the State Office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State Office administrator's response.** The State Office administrator who receives a contested grievance responds to the grievant within 10-business days or by the due date on ~~Form 15GR011E~~ the Contested Grievance Transmittal Form. The advocate general or the advocate general's designee may grant an extension when good cause is shown. The State Office administrator sends his or her response directly to the LGC after completing the designated portion of ~~Form 15GR011E~~ the Contested Grievance Transmittal Form. A copy is sent to the advocate general or the advocate general's designee. The State Office administrator attaches his or her response to ~~Form 15GR011E~~ the Contested Grievance Transmittal Form and includes:

- (1) the proposed resolution and how it will be implemented;
- (2) the names of those responsible for implementing the proposed resolution;
- (3) the proposed resolution target date;
- (4) the facts and analysis supporting the proposed resolution including relevant documentation; and
- (5) any relevant written rules, policies, procedures, regulations, or other information.

(i) **Timely response required.** The OCA grievance liaison monitors the timely response by the State Office administrator. When a complete response is not timely received by the OCA grievance liaison and an extension was not granted, the OCA grievance liaison immediately processes the grievance for review by the Grievance and Review Committee (GARC), per ~~OAC 340:2-3-64(b)~~ 310:678-7-3. OCA notifies the grievant and affected State Office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or the LGC's designee contacts the decision-maker within three-business days following receipt of the State Office administrator's response. When the decision-maker accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** When the grievant does not accept the State Office administrator's response, the LGC completes the designated portion of ~~Form 15GR011E~~ the Contested Grievance Transmittal Form and returns it to the OCA grievance liaison within three-business days. Upon OCA receipt of ~~Form 15GR011E~~ the Contested Grievance Transmittal Form, the grievance is processed for review by GARC, per OAC ~~340:2-3-6~~ 310:678-7-3.

### **310:678-5-3. Grievances of minors being served by Child Welfare Services**

(a) **Application.** This Section describes grievance processes relating to children being served by Child Welfare Services (CWS).

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-2~~ 310:678-1-2 apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Written notice of the child being served by CWS's grievance rights is provided to each child being served by CWS when services commence and at least annually thereafter, and to any foster placement when the child enters placement and at least annually thereafter. The notice explains the child being served by CWS's right to grieve and, when applicable, identifies the relevant local grievance coordinator (LGC).

(d) **Grievance defined.** Per Section §1-9-120 of Title 10 A of the Oklahoma Statutes (10A O.S. § 1-9-120), each child being served by CWS has the right, without fear of reprisal or discrimination, to present grievances with respect to the providing or receiving of services.

(1) **Grievable issues.** Except for the limitations listed in (d)(2) of this Section, matters that are grievance subjects include:

(A) the substance or application of any written or unwritten policy or rule of Oklahoma of Human Services (OKDHS) or an OKDHS agent, per 10A O.S. § 1-9-112;

(B) any decision or action by an OKDHS or child-placing agency employee or agent; or

(C) denial of any right included in the statement of rights, per 10A O.S. § 1-9-119.1.

(2) **Non-grievable issues.** When it is determined by the Office of Client Advocacy (OCA) the child being served by CWS is asking to grieve a problem or concern covered in OAC ~~340:2-3-45(e)(2)~~ 310:678-5-1(c)(2) or by any of the categories listed in (A) through (C) of this paragraph, the OCA Grievance Unit must notify the child being served by CWS, in writing, why the grievance is not being processed. In addition to OAC ~~340:2-3-45(e)(2)~~ 310:678-5-1(c)(2), situations that are not grievable by children being served by CWS under the grievance system are:

(A) a court decision;

(B) findings of a child abuse and neglect assessment or investigation; and

(C) a complaint alleging retaliation by an OKDHS employee. When retaliation is alleged, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) **Retaliation or discrimination allegations.** Retaliation, harassment, or discrimination allegations, per OAC ~~340:2-3-38(b)~~, are processed, per ~~that Section~~ OAC 310:678-3-8. All other discrimination allegations are referred the OKDHS Office for Civil Rights (OCR) and, the Grievance Unit forwards the complaint to the OKDHS OCR administrator, and informs the child being served by CWS in writing.

(e) **Grievance filing and processing.** A grievance filed by a child being served by CWS is processed as provided for in this Section.

(1) Grievances of children being served by CWS are filed with the Office of Juvenile System Oversight of the Oklahoma Commission on Children and Youth. Dispute resolutions for children being served by CWS must be accomplished quickly, informally, and at the lowest possible level.

(2) A grievance may be filed by:

(A) any minor being served by CWS; or

(B) anyone interested in the minor's welfare, such as a parent, staff, foster parent, child's attorney, or court-appointed special advocate.

(3) When a grievance is filed by someone other than the child being served by CWS and the child being served by CWS is of sufficient age to express his or her own preferences, OCA staff contacts

him or her to determine whether he or she wants the grievance to continue. When the child being served by CWS does not want the grievance to continue, the grievance is withdrawn and the file is closed.

(4) Grievances for children being served by CWS must be filed within 45-calendar days of the event. For a grievance to be considered valid, a complaint must be timely filed online, by phone, or by paper form. When a course of misconduct is alleged, by a child being served by CWS, the grievance must be filed within 45-calendar days of the most recent occurrence in the course.

(5) After the grievance procedure is completed, a child being served by CWS or former child being served by CWS has a right of access to the record of grievances he or she filed.

(6) Grievances of children being served by CWS are deemed timely-resolved within no more than 60-calendar days of the complaint filing date.

(f) **Informal resolution of grievance.** The informal resolution of grievances is encouraged. To that end, when a grievance is filed by, or on behalf of a child placed in a:

(1) foster home, the grievance is initially forwarded to the involved child's worker. When the worker can promptly resolve the grievance, he or she notifies the OCA Grievance Unit of the resolution details and the file is closed. When the worker cannot promptly resolve the grievance, he or she informs the OCA Grievance Unit of the same and the grievance proceeds to the initial resolution level; or

(2) facility, group home, or shelter, the grievance is initially processed by the LGC. When the LGC is able, without further processing, to promptly resolve the complaint to the grievant's satisfaction, the LGC documents this fact at the bottom of the grievance form, signs the form, and files it in the appropriate grievance file. When the LGC cannot promptly resolve the grievance, he or she informs the OCA Grievance Unit of the same and the grievance proceeds to the initial resolution level.

(g) **Initial resolution level.**

(1) Within three-business days of the grievance's processing from the informal resolution stage, the OCA Grievance Unit identifies the initial resolution respondent and submits the grievance and supporting documentation to him or her.

(2) The OCA Grievance Unit monitors the respondent for a timely response. Within three-business days following receipt of the grievance from the OCA Grievance Unit, the initial resolution respondent reviews the grievance, interviews the child being served by CWS and any other necessary persons, prepares a proposed resolution, and submits the proposed resolution on OKDHS letterhead to the OCA Grievance Unit. When requested, and upon a showing of good cause, the OCA Grievance Unit may grant an extension of relevant due dates to the initial resolution respondent. When a timely response is not received, the OCA Grievance Unit may proceed to first elevation.

(3) Within three-business days following receipt of the initial respondent's proposed resolution, the OCA Grievance Unit or designee sends written notice to the decision-maker containing the proposed resolution and information on the right to elevate the grievance when dissatisfied with the proposed resolution.

(4) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of the resolution. When the decision-maker rejects the respondent's resolution at the initial resolution level, the grievance proceeds to first elevation unless the decision-maker requests mediation.

(h) **Mediation for children being served by CWS.** When the decision-maker rejects the respondent's proposed resolution, the decision-maker may request grievance mediation.

(1) When the decision-maker chooses not to request mediation after rejecting the respondent's proposed resolution, the grievance proceeds to first level elevation process.

(2) When the decision-maker requests mediation, all deadlines are suspended while mediation is ongoing. When the decision-maker requests an extension in order to pursue mediation, the OCA Grievance Unit must grant the requested extension. The grievance is not processed until the mediation is completed, and grievance timeframes are suspended for the duration of the mediation.

When mediation resolves the original grievance, the decision-maker may withdraw the grievance or the OCA Grievance Unit may declare the grievance administratively resolved. When a decision-maker grieves and requests mediation of the dispute before filing a grievance alleging retaliation, the OCA Grievance Unit computes deadlines from the date mediation concluded.

(3) When the grievance is not resolved through mediation, it proceeds to first elevation.

**(i) First elevation.**

(1) Within three-business days after the grievant requests a first elevation, the OCA Grievance Unit identifies the first elevation respondent and submits the complaint and supporting documentation to him or her.

(2) The OCA Grievance Unit monitors timely response by the first elevation respondent. Within five-business days following receipt of the grievance from the OCA Grievance Unit, the first elevation respondent reviews the grievance, interviews the child being served by CWS and any other necessary persons, prepares a proposed resolution, and submits the proposed resolution on OKDHS letterhead to the OCA Grievance Unit. When requested, and upon a showing of good cause, the OCA Grievance Unit may grant an extension to the respondent. When a timely response is not received, the OCA Grievance Unit may proceed to the second elevation.

(3) Within three-business days following receipt of the first elevation respondent's proposed resolution, the OCA Grievance Unit sends written notice including the proposed resolution and information on the grievant's right to elevate the grievance, when the decision-maker is dissatisfied with the proposed resolution.

(4) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of the resolution. When the decision-maker opts to reject the first elevation respondent's proposed resolution, the grievance proceeds to the second elevation.

**(j) Second elevation.**

(1) Within three-business days after the decision-maker requests a second elevation, the OCA Grievance Unit prepares and sends (A) through (D) of this paragraph to the State Office administrator with decision-making authority to respond to the subject of the grievance. The OCA Grievance Unit sends:

(A) a copy of the complaint;

(B) all prior proposed resolutions;

(C) all of the decision-maker's responses to all prior proposed resolutions; and

(D) instructions for response, including any relevant deadlines.

(2) Within seven-business days following receipt of the grievance from the OCA Grievance Unit, the State Office administrator reviews the grievance, interviews the child being served by CWS and any other necessary persons, prepares a proposed resolution, and submits the resolution to the OCA Grievance Unit. The proposed resolution must be on OKDHS letterhead and include:

(A) the proposed resolution and implementation;

(B) the person or persons responsible for implementing the proposed resolution;

(C) the target date for the proposed resolution;

(D) the facts and analysis supporting the proposed resolution, including relevant documentation; and

(E) any relevant rules, policies, procedures, regulations, or other information.

(3) The OCA Grievance Unit monitors the timely response by the State Office administrator. The OCA Grievance Unit may grant an extension, when requested. When a timely response is not received, the OCA Grievance Unit may proceed to the Grievance and Review Committee (GARC), per OAC ~~340:2-3-64(b)~~ 310:678-7-3(b). The OCA Grievance Unit notifies the grievant and the affected State Office administrator that the grievance is being processed for GARC.

(4) Within three-business days following receipt of the proposed resolution, the OCA Grievance Unit sends written notice to the decision-maker containing the proposed resolution and information on the right to elevate the grievance when he or she is dissatisfied with the proposed resolution.

(5) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of the resolution. When the decision-maker rejects the State Office administrator's proposed resolution, the grievance proceeds to GARC.

(k) **GARC review.** A GARC review is conducted, per OAC ~~340:2-3-64~~310:678-7-3.

### **310:678-5-4. Foster parent grievances**

(a) **Application.** This Section describes processes relating to foster parent grievances. Section 1-9-120 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-120) confers on ~~Oklahoma Human Services (OKDHS)~~OCA the responsibility to establish grievance procedures for foster parents contracting with state agencies or child-placing agencies.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) OAC ~~340:2-3-23~~310:678-1-2 and ~~340:2-3-45(b)~~310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** ~~Form 15GR008E~~, The prescribed form approved by OSDH regarding Notice of Grievance Rights —of Foster Parents, is given to each foster parent when approved as an OKDHS foster parent, at reassessment, and with each new placement. It is given to the foster parent by the Child Welfare Services (CWS) specialist assigned to the foster home within two-business days of the approval, reassessment, or placement. ~~Form 15GR008E~~ The Notice of Grievance Rights of Foster Parents Form is used to explain the foster parent's right to grieve and to inform the foster parent of the means through which a grievance may be filed. After the foster parent signs ~~Form 15GR008E~~ the Notice of Grievance Rights of Foster Parents Form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in (d)(2) of this Section, matters that are the subjects of a grievance include:

- (A) the substance or application of any OKDHS policy, rule, or regulation; or
- (B) a decision, act, or omission of an OKDHS employee.

(2) **Non-grievable issues.** When it is determined the foster parent is asking to grieve a problem or concern covered in OAC ~~340:2-3-45(e)(2)~~310:678-5-1(c)(2) or by any of the categories listed in (A) through (G) of this paragraph, the Office of Client Advocacy (OCA) Intake Unit must notify the Foster Care Ombudsman (FCO). It is the FCO's or designee's responsibility to notify the foster parent in writing, why the grievance is not being processed. In addition to OAC ~~340:2-3-45(e)(2)~~310:678-5-1(c)(2), situations that are not grievable by foster parents under this grievance system are:

- (A) a court decision;
- (B) findings of a child abuse and neglect assessment or investigation in a foster home. The process for appealing these findings is located at OAC 340:75-3-530;
- (C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is located at OAC 340:75-7-94;
- (D) disputes with other foster parents;
- (E) written plans of compliance. The foster parents provide written input on the compliance documentation;
- (F) a decision not to return a child in OKDHS custody to a foster home after removal due to a child abuse or neglect investigation. The fair hearing process is located at OAC 340:75-1-12.6; and
- (G) a complaint alleging retaliation by an OKDHS employee. When retaliation is alleged, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) **Retaliation or harassment allegations.** Retaliation or harassment allegations, per OAC ~~340:2-3-38(b)~~310:678-3-8, are processed, per that Section.



(4) **Discrimination allegations.** Discrimination or non-compliance allegations based on race, color, national origin, sex, age, religion, disability, political affiliation or opinion, or genetic information unless authorized by law are referred to the OKDHS Office for Civil Rights and the FCO immediately forwards the complaint to the OKDHS OCR administrator, and informs the foster parent in writing.

(e) **Filing and processing a grievance.**

(1) Foster parent grievances are filed with the Oklahoma Commission on Children and Youth (OCCY) Office of Juvenile System Oversight. Foster parent dispute resolutions must be accomplished quickly, informally, and at the lowest possible level.

(2) Foster parent grievances must be filed within 45-calendar days of the event. For a grievance to be considered valid, a complaint must be timely filed at [OKfosterparentvoices.org](http://OKfosterparentvoices.org). When a course of misconduct is alleged, the foster parent grievance must be filed within 45-calendar days of the most recent occurrence.

(3) After the grievance procedure is completed, a foster parent or former foster parent has a right of access to the record of grievances he or she filed.

(4) Foster parent grievances are deemed timely-resolved within no more than 60-calendar days of the complaint filing date.

(f) **Initial Resolution Level.**

(1) Within three-business days following receipt of the grievance, the FCO identifies the respondent and submits the grievance and supporting documentation to the respondent.

(2) The FCO monitors the respondent for a timely response. Within three-business days following receipt of the grievance from the FCO, the respondent reviews the grievance, prepares a proposed resolution, and submits the resolution to the FCO. The FCO may grant an extension to the respondent, when requested. When a timely response is not received the FCO may proceed to first elevation.

(3) Within three-business days following receipt of the respondent's proposed resolution, the FCO or designee sends written notice to the decision-maker containing the proposed resolution and information on the right to elevate the grievance when dissatisfied with the proposed resolution.

(4) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of the resolution. When the decision-maker rejects the respondent's resolution at the initial resolution level, the grievance proceeds to the first elevation unless the decision-maker requests mediation.

(g) **Foster parent mediation.** When the decision-maker rejects the respondent's proposed resolution, the decision-maker may request grievance mediation.

(1) When the decision-maker chooses not to request mediation after rejecting the respondent's proposed resolution, the grievance proceeds to the first elevation.

(2) When the decision-maker requests mediation, all deadlines are suspended while mediation is ongoing. When a foster parent requests an extension in order to pursue mediation through OCCY Foster Parent Mediation Program, per 10 O.S. § 601.6, the FCO must grant the requested extension. The grievance is not processed until mediation is completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance or the FCO may declare the grievance administratively resolved. When a foster parent grieves and requests mediation of the dispute through the OCCY mediation program before filing a grievance alleging retaliation, the FCO computes deadlines from the date mediation concluded.

(3) When the grievance is not resolved through mediation, the grievance proceeds to the first elevation.

(h) **First elevation.**

(1) Within three-business days after the grievant requests first elevation, the FCO identifies the first elevation respondent and submits the complaint and supporting documentation to the first elevation respondent.

(2) The FCO monitors timely response by the first elevation respondent. Within five-business days following receipt of the grievance from the FCO, the first elevation respondent reviews the grievance, prepares a proposed resolution, and submits the resolution to the FCO. The FCO may grant an extension to the respondent, when requested. When a timely response is not received the FCO may proceed to the second elevation.

(3) Within three-business days following receipt of the first elevation respondent's proposed resolution, the FCO sends written notice including the proposed resolution and information on the grievant's right to elevate the grievance when the decision-maker is dissatisfied with the proposed resolution.

(4) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of the resolution. When the decision-maker opts to reject the first elevation respondent's proposed resolution, the grievance proceeds to the second elevation.

(i) **Second elevation.**

(1) Within three-business days after the decision-maker requests a second elevation, the FCO prepares and sends (A) through (D) of this paragraph to the State Office administrator with decision-making authority to respond to the subject of the grievance. The FCO sends:

(A) a copy of the complaint;

(B) all prior proposed resolutions;

(C) all of the decision-maker's responses to all prior proposed resolutions; and

(D) instructions for response, including any relevant deadlines.

(2) Within seven-business days following receipt of the grievance from the FCO, the State Office administrator reviews the grievance, interviews the foster parent and any other necessary persons, prepares a proposed resolution, and submits the resolution to the FCO. The proposed resolution must be on OKDHS letterhead and include:

(A) the proposed resolution and implementation;

(B) the person or persons responsible for implementing the proposed resolution;

(C) the target date for the proposed resolution;

(D) the facts and analysis supporting the proposed resolution including relevant documentation; and

(E) any relevant rules, policies, procedures, regulations, or other information.

(3) The FCO monitors the timely response by the State Office administrator. The FCO may grant an extension, when requested. When a timely response is not received, the FCO may proceed to the Grievance and Review Committee (GARC), per OAC ~~340:2-3-64~~310:678-7-3. The FCO notifies the grievant and the affected State Office administrator that the grievance is being processed for GARC.

(4) Within three-business days following receipt of the proposed resolution, the FCO sends written notice to the decision-maker containing the proposed resolution and information on the right to elevate the grievance when dissatisfied with the proposed resolution.

(5) The decision-maker has three-business days to accept or reject the proposed resolution. Failure to respond to the proposed resolution is deemed acceptance of said resolution. When the decision-maker rejects the State Office administrator's proposed resolution, the grievance proceeds to GARC.

(j) **GARC review.** A GARC review is conducted, per OAC ~~340:2-3-64~~310:678-7-3.

**310:678-5-5. Developmental Disabilities Services (DDS) Greer Center Facility (Greer) resident grievances**

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (DHS)-operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 1406 and 1414.1). 10 O.S. § 1415.1 confers on DHS the

responsibility for establishing an ombudsman program that includes a grievance system at DHS-operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-23~~310:678-1-2 and ~~340:2-3-45(b)~~310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDS facility gives ~~Form 15GR006E~~, the prescribed form approved by OSDH regarding Notice of Grievance Rights ~~of DDS Clients (General)~~, to the resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. ~~Form 15GR006E~~ the Notice of Grievance Rights of DDS Clients (General) Form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs ~~Form 15GR006E~~ the Notice of Grievance Rights of DDS Clients (General) Form, a copy is given to the resident, the resident's guardian, or to the responsible family member when the resident does not have a guardian or both, and the original is maintained in the permanent record for the resident. When the LGC changes, the facility notifies the residents, guardians, or responsible relatives of the new LGC's name and contact information within 20-business days.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed, per OAC ~~340:2-3-45(g)~~310:678-5-1(g) unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an office on campus at Greer. OCA assigns an advocate who serves as the LGC at Greer and provides assistance to residents, their guardians, and persons interested in residents' welfare who want to file a grievance ~~per OAC 340:2-3-71(h)(4)~~.

(2) The OCA advocate at Greer sends a copy of a grievance to the resident's guardian or guardian ad litem and to a responsible relative, unless otherwise specified.

(3) When a grievance involves a decision of a resident's team, the first level respondent is the applicable unit coordinator, unless the unit coordinator is involved in the decision being grieved.

(e) **Time limits on filing grievances.** The time limit set forth in OAC ~~340:2-3-45(g)~~310:678-5-1(g) does not apply to grievances filed by or on behalf of residents.

(f) **Second level problem resolution.** The facility director is the second level respondent.

(g) **Contested grievances.** When a resident elects to contest the facility director's response to a grievance, the contested grievance is processed, per OAC ~~340:2-3-46~~310:678-5-2. The DDS director or the director's designee is the State Office administrator responsible for responding to residents' contested grievances.

(h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests a GARC review of the DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using an OCA-prescribed format.

(i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to the treatment of one or more residents; the substance, application, or interpretation of any policy, rule, or regulation, of DHS or a DHS agent or contractor; or any decision, behavior, or action of a DHS employee, agent, or contractor, or of another resident.

(1) An advocate formal inquiry is submitted directly to the facility director or any other DHS employee believed to have the knowledge to respond to the inquiry. The person, to whom the inquiry is submitted, has seven business days from receipt of the inquiry to respond in writing. The advocate general may grant an extension for good cause shown.

(2) When the response does not resolve the concern that prompted the formal inquiry or when a response is not timely received, the matter may be treated as a formal grievance and processed as a contested grievance, per OAC ~~340:2-3-46~~310:678-5-2.

(3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and the recommendations. An advocate general report is submitted to the facility director, when applicable, and the State Office administrator. A copy is submitted to the DHS Director.

(j) **Advocate grievance.** An OCA advocate may file a grievance on behalf of a resident when a grievance was not filed by, or on behalf of a resident.

(1) At the discretion of the advocate general or the advocate general's designee, an advocate grievance is filed directly with the facility director. The facility director has seven business days to respond in writing. The advocate general or the advocate general's designee may grant an extension for good cause shown.

(2) When the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance, per OAC ~~340:2-3-46~~310:678-5-2.

(k) **Fast track grievances.** When the subject of a DHS grievance is such that time is of the essence, with the approval of the advocate general or the advocate general's designee, a grievance may be submitted directly to the facility director or to the OCA grievance liaison for processing as a contested grievance, per OAC ~~340:2-3-46~~310:678-5-2. When a grievance involves a time sensitive problem, the OCA grievance liaison may shorten the time for responding as warranted by the circumstances.

### **310:678-5-6. Grievances of Hissom class members**

(a) **Application.** This Section describes processes relating to grievances of Hissom class members. The Oklahoma Department of Human Services (DHS) legal basis and authority for grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, et al., vs. The Hissom Memorial Center, Case No. 85-C-437-E.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-23~~310:678-1-2 and ~~340:2-3-46~~(b)310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class member gives ~~Form 15GR007E~~, the prescribed form approved by OSDH regarding the Notice of Grievance Rights —of Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services (DDS) case manager, and the program coordinator of the applicable provider for placement in the client's home record. The original is maintained in the class member's OCA's record.

(d) **Filing and processing of grievances.** Grievances of class members are processed per OAC ~~340:2-3-45~~310:678-5-1 unless otherwise provided in this Section.

(1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for class members and provides assistance to class members and persons interested in class members' welfare who want to file a provider or DHS grievance per OAC ~~340:2-3-71~~(h)(4)310:678-9-1. When an advocate files a provider or DHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the DDS case manager assigned to the class member and to the DDS programs administrator for community services.

(2) Class members, guardians, volunteer and other advocates, case managers, personal support team members, and persons interested in class members' welfare can file a DHS grievance by completing ~~Form 15GR001P (paper version) or 15GR001E (electronic version)~~the prescribed Grievance Form(s). The advocate submits a completed ~~15GR001P~~Grievance Form to the LGC. When the advocate completes ~~Form 15CR001E~~and submits the Grievance Form electronically, the OCA grievance unit submits it directly to the LGC within one business day of receipt. When the LGC receives a grievance that was not submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate by email, fax, or phone.

(3) When a grievance involves a decision of a class member's team, the first level respondent is the supervisor of the client's DDS case manager, unless the case manager is involved in the decision being grieved.

(e) **Provider grievances.**

(1) Each residential and vocational provider that contracts with DDS to provide services to Hissom class members has a grievance resolution system. The provider's written grievance policies, forms, and procedures are in compliance with OAC ~~340:2-3-45~~310:678-5-1.

(2) Provider grievances by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member are initiated using ~~Form 15GR001P or 15GR001E~~ the prescribed Grievance Form(s) or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator LGC. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the DDS case manager, the LGC promptly informs the DDS case manager and the advocate by email, fax, or phone. When a DHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDS case manager and the OCA advocate assigned to the class member.

(3) When the subject matter of a grievance can be submitted for resolution as a provider grievance or a DHS grievance, the class member has the option to as a provider grievance, a DHS grievance, or both.

(f) **Time limits on filing grievances.** The time limit set forth in OAC ~~340:2-3-45~~(g)310:678-5-1(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) **Fast track grievances.** When the subject of a DHS grievance is such that time is of the essence with the approval of the advocate general or the advocate general's designee, a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance per OAC ~~340:2-3-46~~310:678-5-2. When a grievance involves a time sensitive problem, the OCA grievance liaison can shorten the response time as warranted by the circumstances.

(h) **Second level problem resolution.** The area manager of the appropriate DDS area office is the individual responsible for responding to a DHS grievance at the second level of problem resolution.

(i) **Contested grievances.** When the response to a DHS or provider grievance is contested by a class member or a grievant on behalf of a class member, the contested grievance is processed per OAC ~~340:2-3-46~~310:678-5-2 unless otherwise provided in this Section. The DDS director is the state office administrator responsible for responding to contested grievances of class members.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by GARC of the DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using the OCA-prescribed format that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, of DHS or an agent or contractor of DHS; or any decision, behavior or action of a DHS employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the DDS director. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(2) When the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the State Office administrator. A copy is submitted to the DHS Director.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance was not filed by or on behalf of the class member.

(1) At the discretion of the advocate general or the advocate general's designee, an advocate grievance is submitted directly to the administrator of a provider agency or the appropriate DDS area manager using ~~Form 15GR003E~~ the prescribed Grievance - Hissom Class Member Form approved by OSDH.

(2) An advocate general grievance is submitted directly to the DDS director or the administrator of the provider agency, as applicable.

(3) The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance per OAC ~~340:2-3-46~~310:678-5-2.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs per OAC ~~340:2-3-45(d) through (h)~~310:678-5-1(d) through (h).

### **310:678-5-7. Grievances of clients receiving services from the Developmental Disabilities Services (DDS)**

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from DDS who are not residing in an Oklahoma Department of Human Services- (DHS) operated facility and are not Hisson class members. This Section includes minors and adults in specialized foster care. Subsections (h) through (k) apply to clients who were former residents of NORCE or SORC, upon the Oklahoma Commission for Human Services resolution to close the state operated resource centers November 1, 2012.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-45(b)~~310:678-1-2 and ~~340:2-3-45(b)~~310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The DDS case manager gives ~~Form 15GR006E~~, the prescribed form approved by OSDH regarding Notice of Grievance Rights —of DDS Clients (General), to the service recipient or guardian when applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. When the service recipient does not have a DDS case manager, the provider gives ~~Form 15GR006E~~ the Notice of Grievance Rights of DDS Clients (General) Form to the service recipient within 30-calendar days of service initiation and annually thereafter. ~~Form 15GR006E~~ The Notice of Grievance Rights of DDS Clients (General) Form is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the client's permanent record.

(d) **Filing and grievance processing.** Provider and DHS grievances are filed and processed per OAC ~~340:2-3-45~~310:678-5-1. When a grievance involves a decision of an individual's team, the first level respondent is the supervisor of the client's case manager unless the case manager participated in making or approved the decision being grieved.

(e) **Time limits on filing grievances.** The time limit set forth in OAC ~~340:2-3-45(g)~~310:678-5-1(g) does not apply to grievances filed by or on behalf of the clients listed in this Section.

(f) **Contested grievances.** When a grievant asks to appeal a DHS grievance, the appeal is processed per OAC ~~340:2-3-46~~310:678-5-2.

(g) **Monitoring grievance programs.** In order to avoid unnecessary duplication, the Office of Client Advocacy (OCA), in cooperation with other monitoring entities, monitors provider grievance programs per OAC ~~340:2-3-45 (d) through (m)~~310:678-5-1(d) through (m).

(h) **Provider grievances of DDS clients who were former residents at NORCE or SORC as of November 1, 2012.**

(1) Each residential and vocational provider that contracts with DDS to provide services to DDS clients has a grievance system for resolution of grievances. The provider's written grievance policies, forms, and procedures are in compliance with OAC ~~340:2-3-45~~310:678-5-1.

(2) Provider grievances are initiated by the DDS client, the assigned OCA advocate, or a person interested in the welfare of the client by using ~~Form 15GR001P (paper version) or 15GR001E (electronic version)~~ the applicable prescribed Grievance Form(s) or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of

a provider grievance by or on behalf of a DDS client by anyone other than the OCA advocate or the client's DDS case manager, the local grievance manager promptly informs the DDS case manager and the advocate assigned to the client by email, fax, or phone. When a DHS employee initiates a grievance on behalf of a client, at the time the grievance is filed the employee sends a copy to the DDS case manager and the OCA advocate assigned to the client.

(3) When the subject matter of a grievance can be submitted for resolution as a provider grievance or a DHS grievance, the DDS client has the option to file it as a provider grievance, a DHS grievance, or both.

(i) **Contested grievances.** When the response to a DHS or provider grievance is contested by a DDS client or a grievant on behalf of a client, the contested grievance is processed per OAC ~~340:2-3-46~~310:678-5-2 unless otherwise provided in this Section. The DDS director is the state office administrator responsible for responding to DDS client contested grievances.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a DDS client requests a GARC review of the DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using the OCA-prescribed format that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or OCA advocate staff may file a formal inquiry to request information relating to:

(1) the treatment of a client;

(2) the substance or application of any DHS policy, rule, or regulation of DHS or an agent or contractor of DHS; or

(3) any decision, behavior or action of a DHS employee, agent or contractor, or of another client.

(A) A formal inquiry is submitted directly to the community services provider administrator or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the DDS director. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(B) When the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(C) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator when applicable, and the State Office administrator. A copy is submitted to the DHS Director.

### **310:678-5-8. Grievances of residents of private group homes for individuals with developmental disabilities**

(a) **Application.** This Section describes processes relating to grievances of residents of private group homes subject to Section 1430.01, et seq., of Title 10 of the Oklahoma Statutes. The Oklahoma Department of Human Services (OKDHS) legal authority includes Sections 1430.11 and 1430.20 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC ~~340:2-3-23~~310:678-1-2 and ~~340:2-3-45(b)~~310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Upon admission, each individual and, if appropriate, the resident's family or designated representative is given a copy of the group home's grievance procedure and a written notice which identifies the group home's grievance coordinator and explains the resident's right to file grievances. After the resident or the resident's guardian signs the notice form, a copy is made for the resident or the resident's guardian. A copy also is sent to the resident's DDS case manager if one is assigned. The original is maintained in the resident's permanent record. The grievance procedure is reviewed with the resident or the resident's guardian at least one time a year. If the designated LGC changes, the group home notifies the residents and the residents' guardian or a responsible relative of the name and contact information of the new LGC within ten business days.

(d) **Grievance policies required.** Every private group home to which this Section applies is required to operate a system for resolution of grievances by residents using policies and procedures in compliance with OAC ~~340:2-3-45~~310:678-5-1. If a grievance involves a decision of a resident's team and the resident has a DDS case manager, the first level respondent is the supervisor of the client's case manager.

(e) **Contested grievances appealed to the state office.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC ~~340:2-3-46~~310:678-5-2.

(f) **Monitoring grievance programs.** The Office for Client Advocacy, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors group home grievance programs in accordance with OAC ~~340:2-3-45(d) through (h)~~310:678-5-1(d) through (h).

### **310:678-5-9. DHS client grievances not covered by another grievance system**

(a) **Application.** This Section describes the grievance policy for persons receiving Oklahoma Department of Human Services (DHS) services not covered by another grievance system or issues not specifically addressed by the DHS fair hearing process. A grievance or complaint is not processed under this Section if DHS has a formal administrative appeal or review process in place that addresses the grievance or complaint.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-23~~310:678-1-2 and ~~340:2-3-45(b)~~310:678-5-1(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of client bill of rights.** The DHS Client Bill of Rights poster, DHS Pub. No. 92-06, is posted in conspicuous view of the public in all offices and facilities. Applicants and recipients of benefits and services administered by DHS have the right to:

- (1) be treated with courtesy and dignity;
- (2) receive prompt service;
- (3) receive clear explanations of the laws and rules that determine eligibility for benefits and services;
- (4) have benefits and services explained in native language, when unable to understand English;
- (5) have benefits and services explained by an interpreter for the deaf, when unable to hear well;
- (6) have forms read and explained, when unable to read forms because of limited eyesight, or other inability to read;
- (7) receive fair and consistent consideration of any application for benefits or services;
- (8) have the opportunity for an appeal and a fair hearing in case of denial or reduction of benefits or services;
- (9) discuss with a local DHS supervisor any complaint regarding DHS benefits or services or treatment by DHS staff;
- (10) contact the DHS Office of Client Advocacy (OCA) at ~~1-800-522-8014~~, regarding any complaint that has been discussed with, but not resolved by, the local office supervisory staff; and
- (11) receive, upon request, a further explanation of applicant or client rights.

(d) **Filing a grievance.** Recipients of benefits and services administered by DHS, and persons acting on behalf of recipients, have the right to talk with a local DHS supervisor if they have a complaint about the way they were treated by DHS staff. Supervisory staff promptly seeks to resolve the matter with the client. Clients have the right to contact OCA, ~~Attn: Grievance Liaison, PO Box 25352, Oklahoma City, OK 73125 (1-405-522-2720 or 1-800-522-8014, fax 1-405-522-2680)~~ regarding any complaint that has been discussed with, but not resolved by, the local office supervisory staff.

(e) **Allegations of discrimination.** When a grievance or complaint alleges discrimination based on sex, age, national origin, religion, color, or disability, the client is referred to the DHS Office for Civil Rights for appropriate handling and resolution of the complaint. The local grievance coordinator immediately forwards the grievance to the DHS civil rights administrator and so informs the grievant.

(f) **Processing a grievance.** When a client contacts OCA for assistance in resolving a complaint, OCA contacts DHS supervisory staff who have the authority to resolve the grievance to request a response to the grievance within seven business days.



(1) The advocate general may grant an extension for good cause, such as an unusually complex matter.

(2) When a complete response is not timely received by OCA, the grievance may be considered unresolved and processed as a contested grievance.

(3) After receiving a response to the grievance, OCA contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance. When the grievant is not satisfied with the outcome and requests to appeal the decision, the grievance is processed as a contested grievance. When OCA does not obtain a reply from the grievant within 10 business days of actual notice to the grievant of the proposed response, the grievance may be deemed resolved.

(g) **Contested grievances.** Contested grievances of clients are processed per OAC ~~340:2-3-46~~310:678-5-2.

### **310:678-5-10. Foster Care Ombudsman (FCO) services**

#### **(a) Legal authority.**

(1) Section 1-9-112(D)(1) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(D)(1)) requires the Office of Client Advocacy (OCA) investigate any complaint received by the Oklahoma Commission on Children and Youth (OCCY) Office of Juvenile System Oversight (OJSO) alleging that an Oklahoma Human Services (OKDHS) or child-placing agency employee threatened a foster parent with removal of a child from the foster parent, harassed a foster parent, refused to place a child in a licensed or certified foster home, or disrupted a child placement as retaliation or discrimination toward a foster parent who engaged in a protected activity.

(2) 10A O.S. § 1-9-120 requires OCA establish grievance procedures for foster parents with whom OKDHS or child-placing agencies contract.

(3) 10A O.S. § 1-9-120 (C) requires OCA to designate one employee to receive and process foster parent grievances. OCA designated the FCO. OCA conferred the FCO with responsibility for fulfilling the duties set forth in (e) of this Section.

#### **(b) Scope.**

(1) The FCO provides services relating to complaints brought by foster parents' against OKDHS or child-placing.

(2) This Section shall not be construed to include any complaint by the foster parent resulting from an administrative, civil, or criminal action taken by the employee or child-placing agency for violations of law or rules, or contract provisions by the foster parent, per 10A O.S. 1-9-120(E)(3).

(c) **Definitions.** The definitions used in this Section are located in Oklahoma Administrative Code (OAC) ~~340:2-3-23~~310:678-1-2, ~~340:2-3-45~~310:678-5-1, and ~~340:2-3-50~~310:678-5-4.

(d) **Confidentiality.** Information in OCA records relating to complaints filed with the FCO by foster parents is confidential and protected from unauthorized use. Only authorized individuals are given access to case records or provided information from these records. ~~A breach of confidentiality may result in criminal prosecution. Violations by OKDHS employees can also result in personnel action. The relevant confidentiality provisions are located at 10A O.S. § 1-6-107 and OAC 340:75-1-42.~~

(e) **Duties.** The FCO is responsible for:

(1) overseeing and resolving grievances between foster parents and state agencies or child-placing agencies, per OAC ~~340:2-3-50~~310:678-5-4;

(2) referring complaints meeting the criteria for retaliation, per 10A O.S. § 1-9-112(D)(1) to the OCA Investigative Unit, per OAC ~~340:2-3-38~~310:678-3-8;

(3) referring cases for mediation, when appropriate, per OAC ~~340:2-3-50~~(g)310:678-5-4;

(4) collecting and maintaining data necessary to identify systemic issues that may be addressed and resolved to improve the foster care system. In partnership with OCCY, prepares an annual report for the legislature based on collected data and makes recommendations as appropriate for improvements of procedures and policies to benefit children and families;

- (5) conducting training, education, and outreach activities for the benefit of those involved in, or potentially involved in foster care, and maintaining personal accessibility in order to address questions and concerns;
- (6) providing resources and referrals to interested parties; and
- (7) collaborating with foster parents, CWS, Developmental Disabilities Services, and OCCY OJSO in efforts to improve the foster care system.

(f) **Initial disposition of the complaint.** Upon receipt, the FCO or designee must examine the complaint to determine if it meets the criteria for a grievance, retaliation, harassment, discrimination investigation or if another disposition is appropriate. Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in OAC ~~340:2-3-50(h)~~310:678-5-4, matters that can be the subject of a grievance include:

- (A) the substance or application of any policy or rule of OKDHS or its agents; or
- (B) any decision or action by an OKDHS employee or its agents; or
- (C) a violation by an OKDHS or a child-placing agency employee of the Foster Parent Bill of Rights, per 10A O.S. § 1-9-119.

(2) **Non-grievable issues and intra-agency referrals.** When the FCO or designee determines the complaint is not grievable, and does not present an issue of retaliation, harassment, or discrimination suitable for investigation, the FCO or designee determines if an intra-agency referral is appropriate, makes any necessary referrals, and closes the file. Foster parent complaints subject to an intra-agency referral are deemed closed at the time any necessary follow-up is completed.

(3) **Information provision.** When the complaint meets none of the criteria above, but is resolvable through the provision of information readily obtainable by the FCO or designee, the FCO may, at his or her discretion, resolve the complaint by obtaining the necessary information.

(4) **Preliminary inquiry.** When the information contained in the complaint is insufficient to enable the FCO, to determine appropriate disposition, a preliminary examination may be completed.

## SUBCHAPTER 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

### **310:678-7-1. Grievance and Abuse Review Committee (GARC)**

(a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section 1-9-112 of Title 10A of the Oklahoma Statutes (O.S. 10A § 1-9-112).

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) ~~340:2-3-23~~310:678-1-2, ~~340:2-3-32~~310:678-3-1, and ~~340:2-3-38~~310:678-3-8 apply to this Part unless the context clearly states otherwise.

(c) **Purpose.** This Section establishes an administrative review committee to review:

- (1) unresolved contested grievances of Oklahoma Human Services (OKDHS) clients listed in OAC ~~340:2-3-45(a)(2)~~310:678-5-1(a)(2) and processed per OAC ~~340:2-3-46~~310:678-5-2 through ~~340:2-3-49~~ and ~~340:2-3-51~~ through ~~340:2-3-55~~310:678-5-9;
- (2) unresolved grievances of foster parents filed per O.S. 10A § 1-9-120 and processed per OAC ~~340:2-3-50~~310:678-5-4; and
- (3) an issue affecting the care and treatment of a minor in OKDHS custody placed in a private or public facility not operated by OKDHS, or in a foster home.

(d) **GARC composition.**

(1) GARC is composed of at least three voting members the ~~OKDHS Director~~ Commissioner of Health appoints. The ~~OKDHS Director~~ Commissioner of Health designates one member to serve as chair and appoints substitute members as needed.

(2) The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.

(e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. GARC members review the agenda material prior to the GARC meeting.

(f) **GARC meetings.**

(1) The advocate general or designee coordinates GARC meetings. This includes:

- (A) arranging the dates for GARC meetings;
- (B) establishing the agenda for GARC meetings;
- (C) eight-calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the GARC meeting date;
- (D) transmitting agenda material to GARC members three-business days prior to a meeting;
- (E) recording the GARC findings and recommendations;
- (F) preparing GARC reports in consultation with GARC members;
- (G) granting time extensions for good cause shown; and
- (H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the meeting's purposes.

(3) At the GARC meeting's conclusion, the matter is taken under advisement and the GARC chair informs interested parties of the results in a written report.

**310:678-7-2. Grievance and Abuse Review Committee (GARC) review of ~~Office of Client Advocacy (OCA)~~ investigation reports regarding foster parent complaints**

(a) **Application.** At the request of the Oklahoma Department of Human Services (OKDHS) Director, GARC reviews an OCA investigation report involving allegations of discrimination and retaliation investigated by OCA in accordance with OAC ~~340:2-3-38~~310:678-3-8.

(b) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) investigated by OCA.

(1) Within three business days of receiving a request for GARC review from the OKDHS Director, the advocate general or designee informs the foster parent(s), the applicable state office administrators and the administrator of any affected child placing agency.

(2) GARC does not consider prior unsubstantiated allegations.

(3) The foster parent, the applicable administrator, affected state office administrators, or their designees, may attend the GARC meeting. The level of participation of attendees is within the discretion of the chair of GARC.

(4) If a foster parent or an administrator wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, additional evidence can be submitted to the advocate general no later than eight business days before the GARC meeting.

(5) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(c) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes:

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm retaliation or discrimination occurred and the basis for GARC's opinion;

(2) if in GARC's opinion the evidence is sufficient to confirm retaliation or discrimination, the report specifies whether retaliation, discrimination, or both occurred and the specific acts constituting the retaliation or discrimination; and

(3) areas of concern identified by GARC during its review of the case regarding practices or procedures of the child placing agency or OKDHS.

(d) **OKDHS Director's response.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

- (1) Within 15 business days of receipt of GARC's report, the OKDHS Director decides whether to:
  - (A) adopt GARC's findings;
  - (B) adopt GARC's findings with modifications;
  - (C) return the matter to GARC for further consideration; or
  - (D) reverse GARC's finding.
- (2) If the OKDHS Director does not respond within 15 business days of receipt of a GARC report, GARC's opinion with regard to the finding(s) becomes final.

**(e) Notification of final result.**

- (1) The advocate general provides notice of the final result of the OKDHS Director's request for GARC review to affected state office administrators and the applicable foster parent(s).
- (2) Within two business days of receipt of this notification, a state office administrator responsible for an employee named in the allegation informs each such employee of the final result of GARC's review.
- (3) Within 20 business days of receipt of this notification in a report which confirms retaliation or discrimination, the state office administrator informs the advocate general in writing if any personnel action has or will be taken with regard to an employee, and of any corrective action taken or to be taken with regard to areas of concern noted in the GARC report.

**310:678-7-3. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances**

(a) **GARC application.** GARC reviews unresolved contested grievances of children in Oklahoma Human Services (OKDHS) custody, Developmental Disabilities Services (DDS) service recipients, and approved or kinship foster parents when the advocate general receives a proper request for a GARC review, per Oklahoma Administrative Code (OAC) ~~340:2-3-46(k)~~ 310:6-5-2(k).

(b) **GARC worksheet.** When the grievance was filed by, or on behalf of, a DDS service recipient who receives Office of Client Advocacy (OCA) advocacy services, including residents of the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA that includes:

- (1) the grievance number and resident, grievant, guardian, parent(s), case manager, and OCA advocate names;
- (2) a grievance process summary, resolutions offered at each level, and the decision-makers' responses;
- (3) the applicable statutes, policies, and authorities;
- (4) the resolution sought by the grievant;
- (5) relevant documentation;
- (6) the OCA advocacy position with regard to the subject of the grievance; and
- (7) copies of ~~Forms 15GR001E,~~ the applicable prescribed Grievance Form(s), and ~~15GR002E,~~ the prescribed Local Grievance Coordinator (LGC) Worksheet.

(c) **GARC review summary.** For GARC reviewed DDS service recipient grievances reviewed by GARC, the OCA grievance liaison prepares a GARC review summary and includes it in the GARC file. For approved foster parents and children served by Child Welfare Services (CWS) the grievance is submitted on the GARC report summarizing all responses from initiation.

(d) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

- (1) Within three-business days following receipt of a proper request for GARC review, per OAC ~~340:2-3-46(k)~~ 310:678-5-4(k), the advocate general or designee informs the affected State Office administrator of the GARC meeting date.
- (2) The grievant, State Office administrators, and designees may attend the GARC meeting to answer questions. When a grievance involves a Hissom Class Member, the OCA programs administrator for the community advocacy program may also attend.
- (3) When the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general within five-business days of the request for

GARC review, but not less than seven-business days prior to the GARC meeting. When the affected State Office administrator wants to submit additional evidence not considered during the processing of the grievance, or when the GARC review is the result of an untimely response, per OAC 340:2-3-46(4)310:678-5-2(i), or for good cause shown, evidence can be submitted to the advocate general seven-business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue the grievance review until the next meeting. GARC may request additional information from OCA or a State Office administrator.

(e) **GARC report contents.** Within 15-business days of a GARC meeting to review an unresolved grievance of a child being served by Child Welfare Services or a DDS service recipient, GARC prepares a report that includes the:

- (1) subject of the grievance and identifying information about the grievant and the State Office administrator;
- (2) grievance procedural history, and identifying proposed resolutions and responses at each level in the grievance process, prior to the GARC review;
- (3) resolution sought by the grievant and the resolution proposed by the State Office administrator;
- (4) GARC recommended grievance resolution;
- (5) facts on which GARC bases its recommendation;
- (6) information GARC considered in making its recommendation; and
- (7) areas of concern identified by GARC during its review of the grievance.

(f) **GARC findings regarding approved foster parents and children being served by CWS.** Within three-business days following the GARC meeting, GARC records the decision on the GARC report. The completed GARC report for foster parent and children being served by CWS grievances includes the:

- (1) subject of the grievance and identifying information about the grievant and the State Office administrator;
- (2) procedural history of the grievance including, but not limited to, proposed resolutions and responses at each level in the grievance process prior to the GARC review;
- (3) resolution sought by the grievant and the resolution proposed by the State Office administrator;
- (4) GARC recommended grievance resolution;
- (5) facts on which GARC bases its recommendation;
- (6) information GARC considered in making its recommendation; and
- (7) areas of concern identified by GARC during its review of the grievance.

(g) **GARC report distribution.** The advocate general forwards the GARC report to the applicable local grievance coordinator (LGC). Within three-business days following receipt of the GARC report, the LGC contacts the decision-maker to inform him or her of the GARC recommended resolution, and determines if the decision-maker is satisfied.

- (1) When the decision-maker needs time to decide whether to accept the proposed resolution, the decision-maker has three-business days to make a decision. When a decision is not communicated to the LGC within three-business days, the decision-maker is deemed to have accepted the proposed resolution.
- (2) When the decision-maker is satisfied, the LGC notifies the advocate general, and the advocate general notifies interested parties. An affected State Office administrator has three-business days following receipt of this notification to submit a written request for review by the OKDHS Director to the advocate general.
- (3) When the decision-maker is not satisfied with the GARC recommended resolution and elects to contest it, the LGC notifies the advocate general within four-business days following receipt of the GARC report. The advocate general or designee transmits the request and the GARC report for review by the OKDHS Director.

(h) **Distribution of GARC report for approved foster parents and children being served by CWS.** The advocate general forwards the final GARC resolution on the GARC report to the FCO.

Within one- business day following receipt of the GARC report, the FCO notifies the decision-maker and affected State Office administrator of the GARC recommended resolution.

(1) The FCO upon notifying the decision-maker and affected State Office administrator of GARC's recommended resolution, advises the parties of their right to appeal the decision to the OKDHS Director. An affected State Office administrator or decision-maker has three- business days following receipt of this notification to submit a written request to the advocate general for review by the OKDHS Director.

(2) When the resolution of the grievance involves an action to be taken by an OKDHS employee by a future target date, the FCO monitors compliance with that target date. In the event the resolution is not implemented or not implemented within the time specified, the FCO informs the advocate general and he or she notifies the OKDHS Director in writing.

(3) When an appeal is not requested by the decision-maker or affected State Office administrator within three- business days following receipt of the recommended resolution, the FCO sends the closure notice to the grievant and State Office administrator.

(i) **OKDHS Director's GARC recommendation review.** Upon receipt by the advocate general of a proper and timely written request for review by the OKDHS Director, per (e) of this Section, the advocate general or designee transmits the request and the GARC report to the OKDHS Director.

(1) Within 15- business days following receipt of the GARC report, the OKDHS Director decides to:

- (A) adopt the GARC recommended resolution;
- (B) adopt the GARC recommendation with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) direct another resolution.

(2) When the OKDHS Director does not respond within 15- business days, the grievance or appeal is deemed resolved, per the GARC recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The decision-maker is informed this concludes the grievant's administrative remedies. When the grievant is a foster parent or child being served by CWS, a copy of the grievance and related materials are forwarded to the Oklahoma Commission for Children and Youth Office of Juvenile Systems Oversight.

(j) **Resolution monitoring for children in OKDHS custody and DDS recipients.** When the resolution of the grievance involves an action to be taken by a OKDHS employee by a future target date, the OCA grievance liaison monitors compliance with that target date. In the event the resolution is not implemented or not implemented within the time specified, the OCA grievance liaison informs the advocate general, and the advocate general notifies the OKDHS Director in writing.

## **PART 9. ADVOCACY PROGRAMS**

### **310:678-9-1. Office of Client Advocacy (OCA) general advocacy services**

(a) **Legal authority and scope.** OCA provides advocacy services to recipients of Developmental Disabilities Services (DDS) listed in this subsection, who are collectively referred to as "clients," per Oklahoma Administrative Code (OAC) ~~340:2-3-71~~310:678-9-1 through ~~340:2-3-75~~310:678-9-4.

(1) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes (10 O.S. § 1415.1(A)(2)) requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for persons with intellectual disabilities operated by OKDHS. OKDHS conferred this responsibility on OCA. The advocacy services provided to Robert M. Greer Center (Greer) and Laura Dester Children's Center (SHIELD) residents are outlined in OAC ~~340:2-3-71~~310:678-9-1 and ~~340:2-3-72~~310:678-9-2.

(2) Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, Inc., et al. v. Hissom Memorial Center, et al., Case No. 85-C-437-TCK-SAJ, require OKDHS and OCA to provide advocacy services to individuals certified by the court as members of

the plaintiff class, known as Hissom Class Members (HCM)s. These services are outlined in OAC ~~340:2-3-71~~310:678-9-1 and ~~340:2-3-73~~310:678-9-3.

(3) Former Northern Oklahoma Resource Center of Enid (NORCE) and the Southern Oklahoma Resource Center (SORC) residents, who transitioned after the Oklahoma Commission for Human Services resolution of November 1, 2012, which closed the facilities, are provided with advocacy services pursuant to that resolution and consistent with the obligation to serve persons with disabilities in the most integrated setting appropriate to their needs. 28 CFR §35.130(d). *Olmstead v. L.C.*, 527 U.S. 581 (1999). These services are outlined in OAC ~~340:2-3-71~~310:678-9-1 and ~~340:2-3-73~~310:678-9-3.

(4) Consistent with the requirements of *Olmstead*, OCA provides special advocacy services on an as-needed basis to other DDS clients. These services are outlined in OAC ~~340:2-3-71~~310:678-9-1 and OAC ~~340:2-3-75~~310:678-9-4.

(b) **Definitions.** The following words and terms, when used in OAC ~~340:2-3-71~~310:678-9-1 through ~~340:2-3-75~~310:678-9-4 shall have the following meaning unless the context clearly indicates otherwise:

(1) "**Capacity assessment**" means the process of determining an individual's ability to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, per OAC 340:100-3-5.

(2) "**Human Rights Committee**" or "**HRC**" means the committee charged with the responsibility for external monitoring and advocacy to address protection of individual rights.

(3) "**Individual plan**" or "**IP**" means a written document developed by the Personal Support Team based upon assessment of need. The IP specifies outcomes pursued on behalf of the individual, steps taken to achieve outcomes, and all services and supports necessary to achieve outcomes.

(4) "**Informed consent**" means the ability to make and express voluntary decisions, given correct and sufficient information about the nature, purpose, risks, benefits, and alternatives of a proposed service or action. Individuals, 18 years of age and older, are presumed to have capacity to give informed consent except to the extent adjudicated incapacitated by the court. An individual is not considered incapacitated solely by reason of his or her diagnosis. Individuals may be adjudicated incapacitated in one area, while being fully capable of understanding and exercising rights in other areas. Individuals have the right to exercise judgment in all areas of capacity.

(5) "**Personal Support Team (PST)**" means the participants in the individual's assessment and planning process. The PST includes the service recipient, case manager, legal guardian, OCA advocate, service providers, and others whose participation is necessary to achieve the outcomes desired by the service recipient.

(6) "**Program coordinator**" or "**PC**" means a person employed by a DDS residential or group home contract provider agency responsible for the supervision, coordination, and monitoring of services provided by the contract provider agency to a service recipient.

(7) "**Service review**" means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of an individual's life at the time the review is completed.

(8) "**Statewide Behavior Review Committee**" or "**SBRC**" means the committee established, per OAC 340:100-3-14 that reviews each protective intervention plan with restrictive or intrusive procedures. The review ensures the plan complies with DDS policy on the use of restrictive or intrusive procedures, per OAC 340:100-5-57.

(c) **Client records.** Information in OCA records relating to advocacy services provided to the clients listed in (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.

~~(1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA client files.~~

~~(2) The confidentiality provisions of OAC 340:5-1-5 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult, as those terms are defined in 43A O.S. §§ 10-103, 10-110, and 10-110.1.~~

~~(3) A breach of confidentiality may result in criminal prosecution. Violations by OKDHS employees may also result in personnel action.~~

(d) **OCA advocate training requirements.** New and tenured OCA advocates receive appropriate training consistent with background and experience. Training includes the rights of DDS clients under federal and state law.

(e) **Client representation.**

(1) OCA assigns OCA advocates to represent:

(A) Greer residents, ~~per Title 10, Section 1415.1(A)(2); and~~

(B) specific DDS clients living in Oklahoma and former NORCE and SORC residents, per Part 9, ~~OAC 340:2-3-71 through 340:2-3-75 of this Subchapter.~~

(2) An OCA advocate is knowledgeable about the clients he or she represents and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An OCA advocate ascertains the client's preferences and choices and becomes familiar with a client by:

(A) reviewing relevant client records and files;

(B) conducting in-person visits and other contacts with the client at home, at work, and in other contexts; and

(C) communicating with the client's program coordinator and provider staff, case manager, and others in the client's circle of support, such as relatives, loved ones, and guardians.

(f) **OCA advocacy services.**

(1) **Advocacy.** Advocacy is assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an OCA advocate seeks to speak on behalf of the client. Advocacy services provided by OCA advocates include, but are not limited to:

(A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;

(B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;

(C) encouraging the development of natural supports including friends, coworkers, and neighbors in the community where the individual lives; and

(D) bringing performance issues or service deficiencies to the attention of those who are responsible for correcting the situation.

(2) **Monitoring.** OCA monitors the well-being and provision of services to a client.

(A) Monitoring is done by means of:

(i) visits and other forms of contact with the client, staff, family members, and those who know the client;

(ii) reviewing records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and

(iii) attendance at IP and other PST meetings.

(B) OCA advocates cooperate with and, render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, relating to client confidentiality and release of information protocols.

(C) The monitoring role of an OCA advocate ensures the client's:

(i) individual needs, preferences, and choices are identified and met appropriately and consistently;

(ii) health, safety, and welfare standards and safeguards are maintained; and

(iii) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.

(3) **Informal problem resolution.** An OCA advocate seeks to resolve issues and client concerns at the lowest level of administrative responsibility or decision-making. Informal problem resolution



seeks to resolve issues and reach a consensus with the client on a plan of action. An OCA advocate seeks to apply an appropriate problem resolution activity that most effectively addresses the nature and imminence of the problem. An OCA advocate assists a client in the development of problem resolution skills and self-advocacy.

(4) **Grievances.** An OCA advocate advises clients and assists them in filing grievances on their own behalf. An OCA advocate may also file grievances on behalf of clients as circumstances require. Grievance policies are found in ~~OAC 340:2-3-45 through 340:2-3-55~~ Subchapter 5.

(5) **Protection and safety.** OCA staff takes appropriate action to protect the client's health, safety, and welfare, including reporting allegations of abuse, neglect, maltreatment, and exploitation, per ~~OAC 340:2-3-32310:678-3-1 through 340:2-3-39310:678-3-9~~.

(A) OCA advocates assist OCA staff, Adult Protective Services investigators, and law enforcement officers in obtaining information necessary to complete investigations when a client is an alleged victim.

(B) OCA advocates engage in appropriate follow-up activity in response to a referral from the OCA Intake Unit, per ~~OAC 340:2-3-35678-3-4~~.

(C) When an OCA advocate has a concern related to a client's health, safety, welfare, or program implementation, he or she advises the client's case manager or designated qualified intellectual disabilities professional (QIDP), as applicable, and others, such as DDS staff, provider or facility staff, treatment staff, or health care professionals as circumstances warrant.

(D) Immediately upon becoming aware of concerns regarding imminent risk of harm, an OCA advocate advises the applicable residential or vocational provider and the client's case manager.

(E) An OCA advocate ensures that abuse, neglect, maltreatment, and/or exploitation allegations are reported to the OCA Intake Unit, per ~~OAC 340:2-3-3331:678-3-2~~.

(6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests through provision of necessary information and assistance to a client to understand his or her options and potential consequences of a decision. When a client is unable to make an informed choice, the OCA advocate seeks to provide the client's legal guardian, guardian ad litem, volunteer advocate, and other representative(s) with access to information to assist him or her to make an informed decision on the client's behalf. The advocate general does not provide legal advice to clients but may provide information about the law.

(7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An OCA advocate takes appropriate steps to protect a client's rights including ensuring those rights are considered in PST decisions and in the manner PST decisions are carried out. An OCA advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client that might result in a rights restriction or a reduction in services. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible, with a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports per federal and state requirements. Although an OCA advocate takes a position with regard to services needed by a client, an OCA advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship and Conservatorship Act promotes the participation of persons as fully as possible in the decisions that affect them, in the development of maximum self-reliance and independence, and the appointments of guardians and others, only to the extent necessitated by the mental and adaptive limitations or other conditions of individuals, per 30 O.S. § 1-103. Because a full guardianship of the person and his or her estate is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship feasible under the circumstances including, but not limited to:

(A) a limited guardianship;

(B) a representative payee for financial benefits;

- (C) a volunteer advocate;
- (D) a supportive friends and family;
- (E) a health care proxy;
- (F) a durable power of attorney; and
- (G) advance directives.

(10) **Promoting inclusion.** An OCA advocate:

(A) promotes the realization of active citizenship and inclusion in the community. This includes, but is not limited to, encouraging clients to:

- (i) learn the rights and responsibilities of good citizenship;
- (ii) vote;
- (iii) take classes;
- (iv) participate in volunteer services organizations;
- (v) attend religious services of his or her choice;
- (vi) attend recreational, cultural, and social events; and
- (vii) join citizen advocacy organizations that promote inclusion in the community;

(B) encourages the development of friends who can serve as natural supports for a client; and

(C) assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between him or her and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental or intellectual disability do not differ from those of other individuals. Regardless of the medical circumstance that brought end-of-life issues to the forefront, an OCA advocate seeks to have a client's physicians, guardians, and loved ones adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's choices, an OCA advocate presumes the client would choose life-sustaining measures.

(g) **Contacting an OCA advocate.** When an OCA advocate is not available during office hours, his or her supervisor serves as back-up. Information about the name of the OCA advocate assigned to a client, the OCA advocate's contact information, and the name of the advocate's supervisor is obtained by phoning OCA at ~~1-800-522-8014~~.

(h) **OCA access to client records and information.** OCA staff is provided access to all records, files, documents, and information needed to fulfill OCA responsibilities regarding a client. DDS case managers, employees, and provider agency staff send the assigned OCA advocate copies of documents and notices sent to the client.

**310:678-9-2. Office of Client Advocacy (OCA) services specific to residents of Robert M. Greer Center (Greer) and Laura Dester Children's Center (SHIELD)**

(a) **Representation.** OCA advocacy services are provided to Greer and SHIELD residents consistent with Oklahoma Administrative Code (OAC) ~~340:2-3-71~~310:678-9-1 and ~~340:2-3-72~~310:678-9-2.

(b) **Grievance coordination.** OCA advocates serve as grievance coordinators for resident grievances, per OAC ~~340:2-3-51~~310:678-5-5.

(c) **Abuse and neglect reporting.**

(1) OCA advocates provide training to Greer and SHIELD employees regarding their obligation to report suspected incidents of abuse, neglect, verbal abuse, exploitation, and caretaker misconduct, per OAC ~~340:2-3-33~~310:678-3-2.

(2) Suspected incidents of abuse, neglect, verbal abuse, exploitation, and caretaker misconduct are immediately transmitted to OCA intake, per OAC ~~340:2-3-33~~310:678-3-2.

(d) **OCA advocacy and monitoring.** OCA advocates provide advocacy and monitoring to ensure compliance with rules, regulations, and policies applicable to residents' health, safety, and welfare. In addition to activities, per OAC ~~340:2-3-71~~310:678-9-1, advocacy and monitoring activities for Greer residents include:

- (1) a face-to-face visit with each resident at least once every six months, and more frequently as needed, to assess and address the resident's advocacy needs;
- (2) periodic site visits to facility buildings frequented by residents, including residential units, vocational programs locations, canteens, and therapy departments, at least quarterly, and more frequently as warranted to monitor compliance with health and safety requirements and protection of client rights including, but not limited to, privacy rights;
- (3) a visit with a resident, at the resident's request, the resident's guardian, or another person concerned about the resident's welfare, unless contraindicated;
- (4) a review of relevant documentation within seven-calendar days of receipt including, but not limited to: individual plan (IP) and interim IPs; accident and incident reports; OCA investigation findings; behavior-data collection forms, guardianship assessments, and other professional reports and assessments;
- (5) serving as a member of a resident's Personal Support Team (PST);
- (6) participating in capacity assessment meetings and annual reviews;
- (7) attending facility Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;
- (8) attending mortality review meetings, per OAC 340:100-3-35;
- (9) reporting policy violations, for administrative action and correction, to the facility director or quality assurance designee;
- (10) promoting (PST) discussion of alternatives to living in the facility, and consulting with PST members regarding community supports and community residential placement alternatives; and
- (11) providing transition advocacy assistance for 90-calendar days from the date the resident moves out of Greer or SHIELD. The 90-calendar days may be extended by the advocate general or designee as warranted. Transition advocacy assistance includes:
  - (A) participating in discharge planning meetings;
  - (B) visiting the identified home prior to the move and ensuring ~~Form 06CB034E~~, the prescribed Residential Pre-service Checklist form approved by OSDH, is completed, any identified issues are resolved, and everything is in place before the resident moves out of Greer or SHIELD;
  - (C) visiting the home within seven-calendar days when a resident moves out of Greer to determine if there are OCA advocacy needs. Making phone contact with the community case manager, program coordinator, resident and/or guardian, and at least one staff person in the home to determine if there are OCA advocacy needs; and
  - (D) visiting the home monthly to assist with resolution of advocacy needs until the case is closed.

**310:678-9-3. Office of Client Advocacy (OCA) advocacy services specific to Hissom Class Members (HCM)s and former Northern Oklahoma Resource Center of Enid (NORCE) and Southern Oklahoma Resource Center (SORC) residents**

(a) **Representation.** OCA provides ombudsman and advocacy services to former HCMs and NORCE and SORC residents of the facilities, per Oklahoma Administrative Code (OAC) ~~340:2-3-74~~ 310:678-9-1. An OCA advocate is assigned to act as an independent resource to ensure the client's needs are met and ensure that he or she is provided with the information, skills, opportunities, and support to:

- (1) make informed choices and decisions about their lives;
  - (2) live in homes and communities where individuals can exercise full rights and responsibilities as citizens;
  - (3) pursue meaningful and productive lives;
  - (4) contribute to their family, community, state, and nation;
  - (5) have interdependent friendships and relationships with others;
  - (6) live free from abuse, neglect, financial and sexual exploitation, and other legal rights violations;
- and

(7) achieve maximum health and full integration and inclusion in society; in an individualized manner consistent with unique strengths, resources, and priorities.

(b) **OCA advocate assignment.** OCA assigns an advocate to each HCM living in Oklahoma and to each former resident of NORCE and SORC. These OCA advocates are assigned for the client's lifetime, so long as they are residing in Oklahoma. Clients are provided choices regarding the OCA advocate assigned to represent them to the extent feasible considering the geographic location of the client's residence and OCA advocate caseloads. Requests for a change in the OCA advocate representing an individual are made to the advocate general or designee.

(c) **Personal Support Team (PST) membership.** As a representative of a HCM or of a Developmental Disabilities Services (DDS) client living in a community residential placement, an OCA advocate is a member of the client's PST.

(1) As a PST member, the OCA advocate receives from the client's DDS case manager, timely notice of all PST meetings, including emergency PST meetings.

(2) The OCA advocate attends the client's:

(A) annual individual plan (IP) meetings;

(B) person-centered planning meetings;

(C) interim meetings;

(D) follow-up planning meetings;

(E) emergency PST meetings;

(F) PST guardianship assessment meetings;

(G) other PST meetings when significant issues are addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or recommended;

(H) PST capacity assessments; and

(I) other PST meetings, at the client's, guardian's, or involved family's or friend's request.

(3) Within the PST context, the OCA advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures a client has a current capacity assessment and attends capacity assessment meetings. When a client with a full guardianship has sufficient capacity to require no guardian or only a limited guardian, the OCA advocate promotes the filing of a petition with the guardianship court to terminate or limit the guardianship appointment. When the current capacity assessment for the client who does not have a guardian recommends a guardian or volunteer advocate, the OCA advocate participates with the PST to identify persons who might serve as the client's guardian or volunteer advocate. An OCA advocate encourages the development of friends in the community who might become the client's guardian or volunteer advocate. The OCA advocate monitors the implementation of the recommendations in the capacity assessment and advocates for timely achievement. When a guardian is needed and a suitable guardian is identified, the OCA advocate promotes the filing of a petition with the guardianship court to appoint a guardian.

(e) **OCA advocacy and monitoring.** OCA provides advocacy and monitoring to ensure compliance with rules, regulations, and policies, applicable to their client's health, safety, and well-being. In addition to the services described in OAC 340:2-3-71(h)310:678-9-1, OCA advocacy and monitoring activities on behalf of each client, include:

(1) verifying that ~~Form 06CB034E~~, the prescribed Residential Pre-Service Checklist form, was completed and everything on the checklist is in place prior to any change in residence;

(2) visiting the client's home within 30-calendar days after the client moves into a new residence;

(3) conducting a face-to-face visit with the client at least once every three months and, more frequently as indicated;

(4) completing a meaningful contact regarding each client served, at least monthly;

(5) completing a service review at least once every six months;

(6) verifying that direct contact staff completed required training in connection with each service review;

- (7) requesting that DDS Quality Assurance staff conduct an administrative inquiry of suspected provider contract violations, per OAC 340:100-3-27;
- (8) assisting the client and his or her guardian or representative with proposed financial agreements and contracts reviews between the client and the provider;
- (9) reviewing documents and electronic files including, but not limited to:
  - (A) assessments, IP, and interim IP documents;
  - (B) incident reports;
  - (C) Adult Protective Services and OCA investigation findings; and
  - (D) behavior data collection forms;
- (10) attending mortality review meetings, per OAC 340:100-3-35;
- (11) attending legal proceedings involving the client, including guardianship proceedings, as circumstances warrant;
- (12) providing an annual copy of ~~Form 15GR007E, Notice of Grievance Rights, Hisson Class Members, or of Form 15GR006E, Notice of Grievance Rights: DDS Service Recipients, as appropriate,~~ the applicable prescribed Notice of Grievance Rights form to each client and/or guardian;
- (13) monitoring the water temperature in homes every six months, using a thermometer to ensure the water does not exceed 120 degrees Fahrenheit;
- (14) verifying that appropriate records are kept with regard to an individual's personal finances, at least once every six months; and
- (15) advocating for the provision of adequate staff to be present in the hospital with HCMs only, prior to and during a hospitalization, as circumstances warrant.

**(f) Advocacy and monitoring services specific to HCMs and former residents of NORCE and SORC, who reside in private intermediate care facilities for individuals with intellectual disabilities (ICF/IID).**

- (1) The assigned OCA advocate conducts a face-to-face visit with a client living in a private ICF/IID at least once every 90-calendar days and more frequently, as warranted.
- (2) Service reviews are not completed.
- (3) The OCA advocate maintains a helping relationship with the client, assessing the realization of desired and targeted outcomes, and initiating change through referral or grievance as needed. During client contacts, the OCA advocate inquires about the client's satisfaction with current supports and provides information regarding available options for community supports.
- (4) The OCA advocate, at least once every six months, contacts the client's guardian when one is appointed. The OCA advocate, in response to a client's expression of dissatisfaction with the current residential arrangements, contacts the guardian. These contacts reaffirm the availability of service options to clients for support in community settings. Contacts with the guardian occur in person, by phone or mail as circumstances warrant.
- (5) The OCA advocate contacts the private ICF/IID case manager, informs the case manager of the OCA advocate's intent to attend yearly planning meetings, and requests notification in advance of yearly planning, interim, and emergency meetings.
- (6) The OCA advocate participates in annual planning meetings at the private ICF/IID. The OCA advocate provides advocacy assistance regarding the client's expressed preferences. The OCA advocate brings the individual's expressed desires and any concerns expressed by him or her, the guardian, or other family members to the attention of the PST. The OCA advocate participates in interim meetings and addresses significant changes in the client's residence, work, health, or important relationships.
- (7) The OCA advocate assesses the client's welfare and determines if OCA advocacy is needed. The OCA advocate develops a working knowledge of the facility's grievance procedure as well as other problem resolution processes and resources for change. The OCA advocate provides assistance, either directly or through referral, resolving concerns identified by the client or by

others on the client's behalf, which may include contacting the Office of the State Long-Term Care Ombudsman.

(8) The OCA advocate provides information and encouragement to the client to consider community residential settings.

**(g) OCA advocacy and monitoring services specific to HCMs and former residents of NORCE and SORC who are in Oklahoma Department of Corrections (DOC) or county sheriff custody.** OCA advocacy and monitoring services for clients, who are in DOC or county sheriff custody, except those who are detained pre-trial, are contained in this subsection. The assigned OCA advocate:

(1) contacts the client at least once every six months. These contacts are in person unless contraindicated by the individual;

(2) obtains copies of court documents that reflect the sentence the client is serving;

(3) assesses the client's welfare and determines if OCA advocacy assistance is needed. The OCA advocate provides assistance, either directly or through referral, resolving concerns identified by the client or by others on the client's behalf. OCA advocacy assistance is provided to enforce the rights of clients under the Americans with Disabilities Act and other federal and state laws, to the extent they are applicable to persons who are in custody; and

(4) provides OCA advocacy assistance with the DDS case manager to commence transition planning when the client has less than a year remaining to serve in custody. The OCA advocate participates in and monitors transition planning, representing the client's interests.

**(h) Services specific to HCMs and former residents of NORCE and SORC who decline DDS services.** Clients and their legal representatives have the right to refuse DDS services, per OAC 340:100-3-11. The OCA advocate for a client, who has declined DDS services contacts the individual at least once every six months and remains available to assist him or her, when requested with OCA advocacy regarding non-specialized assistance. If the OCA advocate determines the client's need or desire for specialized supports has changed, he or she takes appropriate follow-up action with DDS case management.

**(i) OCA advocate services specific to HCMs on the Focused Advocacy List (FAL).** Pursuant to court order, OCA formally assumed the responsibility of acting as advocate for plaintiff class-members identified in *Homeward Bound, et al. v. The Hissom Memorial Center, et al. [85-C-437]*. In response, OCA created the Focused Advocacy program to provide increased OCA advocacy supports to HCMs with limited or no family involvement. In addition to the activities described in (e) & (f) of this Section and OAC 340:2-3-71(h)310:678-9-1, OCA advocacy and monitoring activities on behalf of each client include:

(1) ensuring the assigned DDS representative is invited to the PST meetings when warranted to review and update progress in securing a volunteer advocate or guardian for all clients on the FAL;

(2) visiting each member on the FAL at least once every two months, and more frequently when warranted. Visits include home visits, worksite visits, and other face-to-face contacts;

(3) placing a priority on expanding HCM's circles of support to include persons, who are not paid to be involved in the HCM's life, which includes identifying relatives, not involved in the HCM's life who might be encouraged to become more involved;

(4) identifying HCMs who have the greatest immediate need of a volunteer advocate or guardian. OCA advocates must promptly inform the OCA Focused Advocacy manager when a HCM is identified as having a priority need; and

(5) ensuring a Team Review of Advocate/Guardian Participation (TRAGP) document is prepared for each HCM assigned to them at least annually and one is completed much more frequently whenever there is a significant change in circumstances warranting review of the involvement of persons who are not paid to be involved in the HCM's life. The TRAGP form includes information documenting the need for the individual to remain on, be added to, or be removed from the FAL. The Focused Advocacy Committee meets regularly to review TRAGP forms and determine if HCMs remain on the FAL or require prioritized identification of a volunteer advocate or guardian.