

COMMENT DUE DATE: February 16, 2021

Date: January 15, 2021

Dawn Leemon, OCA **405-760-8560**
Nancy Kelly, Policy Specialist, Legal Services – Policy **405-522-6703**
Dena Thayer, Programs Administrator, Legal Services - Policy **405-693-6542**

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org. The proposed amendment is **permanent**.

SUBJECT: CHAPTER 2. ADMINISTRATIVE COMPONENTS

Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-1 [AMENDED]
Part 3. Investigations
340:2-3-38 [AMENDED]
340:2-3-39.1 [NEW]
Part 5. Grievances
340:2-3-45 [AMENDED]
340:2-3-46 [AMENDED]
340:2-3-47 [AMENDED]
340:2-3-48 [REVOKED]
340:2-3-49 [REVOKED]
340:2-3-50 [AMENDED]
340:2-3-56 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-64 [AMENDED]
Part 9. Advocacy Programs
340:2-3-71 [AMENDED]
340:2-3-72 [AMENDED]
340:2-3-73 [AMENDED]
(WF 21-2B)

SUMMARY:

The proposed amendments to Chapter 2, Subchapter 3 create new rules to clarify and formalize the structure of review processes available to alleged perpetrators in certain investigations.

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) bring rules into conformity with recently-passed statutes: Section 119.1 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-119.1). Rights for children being served by Child Welfare Services, and 10A O.S. § 1-9-120; Grievance procedures for foster parents and foster children; and (2) bring rules into conformity with federal regulation; and (3) account for provider changes.

PERMANENT APPROVAL: Permanent rulemaking is requested.

LEGAL AUTHORITY: 10A O.S. § 1-1-101 et seq.; 10A O.S. § 162; 43A § 10-102 et seq.; Director of Human Services; O.S. 56 § 162; and Section 5101 et seq. of Title 42 of the United States Code.

Rule Impact Statement

To: Programs Administrator
Legal Services – Policy

From: John Dewey, Advocate General

Date: December 18, 2020

Re: **CHAPTER 2. ADMINISTRATIVE COMPONENTS**
Subchapter 3. Office of Client Advocacy
Part 1. Administration
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340:2-3-72 [AMENDED]
340:2-3-73 [AMENDED]
(WF 21-2B)

Contact: Dawn Leemon (405) 760-8560

A. Brief description of the purpose of the proposed rule:

Purpose.

The proposed amendments to Chapter 2, Subchapter 3 create new rules to clarify and formalize the structure of review processes available to alleged perpetrators in certain investigations.

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) bring rules into conformity with recently-passed statutes: Section 119.1 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-119.1). Rights for children being served by Child Welfare Services, and 10A O.S. § 1-9-120; Grievance procedures for foster parents and foster children; and (2) bring rules into conformity with federal regulation; and (3) account for provider changes.

Strategic Plan Impact.

The proposed amendment ensures Office of Client Advocacy rules are compliant with the Pinnacle Plan, Child Welfare Services (CWS) and Developmental Disabilities Services (DDS) rules that pertain to child or vulnerable adult safety.

Substantive changes.

Subchapter 3. Office of Client Advocacy

Part 1. Administration

Oklahoma Administrative Code (OAC) 340:2-3-1 is amended to add statutorily mandated language regarding grievance processes for foster children.

Part 3. Investigations

OAC 340:2-3-38 is amended to add language regarding investigation processes for children being served by Child Welfare Services (CWS), in conformity with new statutory language in 10A O.S. §1-9-119.1 and 10A O.S. §1-9-120.

OAC 340:2-3-39.1 is created to clarify and formalize the review process available to alleged perpetrators in certain OCA investigations.

OAC 340:2-3-45 is amended to add language added to conform to new statutes regarding grievance processes for children being served by CWS.

OAC 340:2-3-46 is amended to add language relevant to new statutes regarding grievances for children being served by CWS.

OAC 340:2-3-47 is amended to add statutorily mandated language regarding grievance processes for children being served by CWS.

OAC 340:2-3-48 is revoked as it is moot. OKDHS no longer operates any shelters or group homes.

OAC 340:2-3-49 is revoked as children being served by CWS includes this population and those rules are outlined in OAC 340:2-3-47.

OAC 340:2-3-50 is amended to bring foster parent grievance rules into conformity with new rules regarding grievance processes for children being served by CWS.

Part 7. Grievance and Abuse Review Committee

OAC 340:2-3-56 is amended to add language added to conform to new statutes regarding grievance processes for children being served by CWS.

OAC 340:2-3-64 is amended to add language added to conform to new statutes regarding grievance processes for children being served by CWS.

OAC 340:2-3-71 is amended to add language to account for provider changes.

OAC 340:2-3-72 is amended to add language to account for provider changes.

OAC 340:2-3-73 is amended to change language to bring it into conformity with federal regulations regarding residential conditions for certain clients.

Reasons.

The proposed amendments to the OCA rules update the sections to incorporate the requirements of new legislation: 10A O.S. § 1-9-119.1 and 10A O.S. § 1-9-120. If the proposed amendments are not implemented, OCA policy will not be in conformity with statutes.

Repercussions.

If the proposed amendments to OCA rules are not implemented, OCA policy will not conform to statutes.

Legal authority.

10A O.S. § 1-1-101 et seq.; 10A O.S. § 162; 43A § 10-102 et seq.; Director of Human Services; O.S. 56 § 162; and Section 5101 et seq. of Title 42 of the United States Code.

Permanent approval. Permanent rulemaking approval is requested.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons most likely to be affected by the proposed amendments are vulnerable adults and children being served by CWS. There is no cost associated with implementation of these rules.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit by the proposed amendments are vulnerable adults and children being served by CWS.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There are no fee changes associated with these proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** The amendments impact OCA investigations of abuse or neglect of children being served by Child Welfare Services (CWS) and grievance procedures for children being served by CWS. There are no costs to the Department of Human Services (OKDHS) or to other agencies in implementing or enforcing the proposed rule. The probable cost to OKDHS of printing and distributing the rules is estimated to be less than \$100.
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendments do not have an economic impact on any political subdivision, nor will the cooperation of any political subdivisions be required in implementation or enforcement of the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There are no anticipated adverse

effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. **An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are neither less costly, nor non-regulatory methods, nor less intrusive methods to achieve compliance.
- I. **A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** Implementation of the proposed OCA rules will have a positive impact regarding safety of vulnerable adults and children being served by CWS by ensuring policy conforms with statutes and federal regulations.
- J. **A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** Failure to implement the proposed rule would create non-conformity between statutes and OKDHS rules. This would have a detrimental impact on public safety.
- K. **The date the rule impact statement was prepared and, if modified, the date modified:** Prepared August 21, 2020; modified December 18, 2020.

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-1. Purpose

Revised 7-1-139-15-21

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

- (1) administrative investigations conducted by OCA are found in Oklahoma Administrative Code (OAC) 340:2-3-32 through 340:2-3-38;
- (2) ~~investigations of alleged Oklahoma Department of Human Services (OKDHS) retaliation or discrimination against a foster parent are found in OAC 340:2-3-38~~;
- (3) ~~disciplinary options regarding OKDHS employees in response to OCA investigation findings are found in OAC 340:2-3-12~~;
- (4) administrative investigations involving the death or near-death of a child known to OKDHS, or administrative investigations in other circumstances, upon request by of the OKDHS Director, per Section 162 of Title 56 of the Oklahoma Statutes;
- (5) grievance systems maintained by OCA are found in OAC 340:2-3-45 through 340:2-3-55;
- (6)(3) the Grievance and Abuse Review Committee (GARC) are found in OAC 340:2-3-61 through 340:2-3-65; and
- (7)(4) OCA Advocacy Programs are found in OAC 340:2-3-71 through 340:2-3-75.

PART 3. INVESTIGATIONS

340:2-3-38. Investigation of ~~foster parent complaints of retaliation, discrimination, or harassment made by foster parents or made by or on behalf of children being served by Child Welfare Services (CWS)~~.

Revised 9-15-179-15-21

(a) **Application.** ~~This Section describes processes relating to~~ The Office of Client Advocacy (OCA) investigates allegations:

- (1) allegations of retaliation, discrimination, or harassment against a foster parent by an employee or agent of the Oklahoma Department of Human Services (DHS) or a child-placing agency. The Office of Client Advocacy (OCA) is designated by Sections 1-9-112 and 1-9-117 of Title 10A of the Oklahoma Statutes (O.S. 10A §§ 1-9-112 and 1-9-117) to conduct investigations into these allegations. 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 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 ~~actions taken~~ differential treatment by a DHS employee an OKDHS or child-placing agency against a foster parent that result in differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law 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) **"OJSO"** ~~means the Office of Juvenile Systems Oversight of the Oklahoma OCCY.~~

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

(A) filing a grievance with ~~DHS, OJSO~~ 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 ~~DHS~~ OKDHS employee; or

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

~~(7)~~(6) **"Retaliation"** means ~~that, in reprisal for the foster parent engaging in a protected activity, an employee of DHS or a child-placing agency has:~~

(A) ~~threatened a foster parent with removal of a child from the foster parent's care; 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) ~~refused or failed to place a child in a licensed or certified foster home; or 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) disrupted a child placement.~~

(8) **"State Office administrator"** ~~means the CWS and DDS directors, or the directors' designees.~~

(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, ~~when a DHS employee or a child-placing agency has participated in:~~

(A) ~~retaliation;~~

(B) ~~discrimination; or~~

(C) ~~harassment against a foster parent who engaged in a protected activity that meet the criteria, per Oklahoma Administrative Code (OAC) 340:2-3-38(a); and~~

■ 1

(2) forwards discrimination allegations to the Office for Civil Rights (OCR). ~~When the alleged discrimination includes allegations of retaliation or harassment, OCA coordinates with OCR 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 ~~DHS~~ 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 ~~which~~ that occurred more than one year after the foster parent or child being served by CWS participated in a protected activity.

(e) **Reportable allegations Protections for foster parents filing complaints in good faith.** ~~Section 1-9-117 of Title 10A of the Oklahoma Statutes 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 a ~~DHS employee~~ an OKDHS or a child-placing agency employee, as outlined in ~~subsection~~ (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 ~~OJSO~~ OCA or using the OCCY website at okfosterparentvoices.org or okfosteryouthmatters.org.

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

- (1) names and addresses of the foster 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.**

~~(1) A DHS~~ 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 ~~the DHS~~ OKDHS personnel policy rules relating to cause for disciplinary action.

~~(2) Interference includes, but is not limited to:~~

- ~~(A) intimidating, harassing, or threatening a party to the investigation;~~
- ~~(B) retaliation against an employee for cooperating during an OCA investigation;~~
- ~~(C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and~~
- ~~(D) causing or influencing another person to provide false information during the investigation.~~

(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 ~~DHS~~ 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. ~~DHS~~ 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 ~~at all times~~ is granted access to any foster home or facility approved, authorized, or funded by ~~DHS~~ OKDHS, or a child-placing agency.

(l) **Investigation procedures.** Investigations are conducted, per ~~Oklahoma Administrative Code (OAC) 340:2-3-36~~, 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 the:

(A) ~~name and phone number of the OCA investigator~~ investigator's name and phone numbers;

(B) the investigative process;

(C) ~~employee's~~ his or her rights and responsibilities relating to the investigation described in ~~subsection~~ (j) of this Section, using Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused ~~DHS~~ 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 ~~facilitate and cooperate~~ 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 ~~did not occur~~ occurred or that a child being served by CWS was subject to retaliation or discrimination. ■ 3

(4) **The written investigation report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written report containing: ■ 2

(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) ~~in~~ 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) AOCs areas of concern identified during the investigation regarding ~~DHS~~ 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) ~~Dissemination of the OCA investigative report~~ dissemination.

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

(B) In cases involving ~~an employee of a child-placing agency~~ employee, the advocate general sends a ~~copy of the OCA report~~ letter summarizing the allegation and the OCA finding to the agency administrator, and sends a copy of the report to the appropriate State Office administrator. When the child-placing agency administrator is the subject of the ~~report~~ investigation, the ~~report~~ 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 ~~DHS~~ 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 ~~O.S.~~ 10A O.S. § 1-9-112 and ~~O.S.~~ 43A O.S. § 10-110.

(m) **Request for reconsideration by 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 the advocate general.

(n) **~~DHS OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC)~~ reconsideration by the advocate general.** Within 30-calendar days of receipt of the final OCA investigative report, the ~~DHS~~ OKDHS Director may request that ~~GARC review the allegations and submit a report of its findings per OAG 340:2-3-63~~ reconsideration by the advocate general.

(o) **~~State Office administrator's response~~ 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 that a ~~DHS employee engaged in retaliation, discrimination, or harassment against a foster parent,~~ and reconsideration was not timely requested within 30-calendar days of receipt of the OCA report, the State Office administrator notifies 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 AOCs areas of concern noted in the OCA report.

(2) When the ~~DHS Director refers the matter for GARC review per (m) of this Section,~~ the State Office administrator's response is due within 30-calendar days of GARC's written report to the DHS Director OKDHS Director refers the matter to the advocate general for reconsideration, the State Office administrator's response to

the advocate general regarding corrective action is due within 30-calendar days of the advocate general's final finding on reconsideration.

~~(3) When an administrator of a child-placing agency administrator receives a copy of an OCA investigative report containing a substantiated letter summarizing the allegations and the OCA finding that an employee of the against a child-placing agency engaged in retaliation, discrimination, or harassment against a foster parent, he or she employee, the child-placing agency administrator notifies 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 as having engaged in retaliation, discrimination, or harassment against a foster parent, and of the status of AOCs areas of concern noted in the OCA report.~~

INSTRUCTIONS TO STAFF 340:2-3-38

Revised ~~9-15-17~~ 9-15-21

- 1. Any complaint communicated by a foster parent or child being served by Child Welfare Services (CWS) either verbally or in writing to an Oklahoma Department of Human Services (DHS) (OKDHS) employee, agent, or State state official is considered when determining if an investigation is warranted.**
- 2. "Identified opportunities for improvement" ~~mean that, while~~ means the Office of Client Advocacy (OCA) determined that foster parent or child being served by CWS retaliation, discrimination, or harassment did not occur, OCA-identified OCA identified possible opportunities for an employee of DHS OKDHS or a child-placing agency to improve in his or her implementation of DHS policies OKDHS rules or practices. Once identified, opportunities for improvement are forwarded for review to the Child Welfare Services CWS State Office administrator or the administrator's designee for review to determine if personnel action is appropriate.**
- 3. Proving retaliation. The elements in (a) through (c) are required for a substantiated finding.**
 - (a) Protected activity by the foster parent or child being served by CWS.**
 - (b) Adverse action by an employee of OKDHS or of a child-placing agency, including any action that may deter a child under similar circumstances from engaging in a protected activity.**
 - (c) Causal connection between the protected activity and the adverse action, consisting of evidence that must be present showing the adverse action was taken in response to the protected activity. Examples of a causal connection include, but are not limited to:**
 - (1) a written or verbal statement by an official that the official took the challenged action in response to the complaining party's protected activity;**
 - (2) evidence that a false reason was given for taking the action;**
 - (3) evidence of disparate treatment between those who did and did not engage in the protected activity; or**
 - (4) evidence that the decision was made soon after the protected activity.**

340:2-3-39.1. Reconsideration process for substantiated findings of vulnerable adult maltreatment in Office of Client Advocacy (OCA) investigations and Community Services Worker Registry (CSWR) procedures.

Issued 9-15-21

(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 mailing date of the notification of findings;

(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) that if 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) failure to submit a request for reconsideration within 20-days of the mailing date of the Notification of Findings 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 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 mailing date of the Notification of Findings, 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; ■ 1
- (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) appellant;
 - (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) Developmental Disabilities Services (DDS), when applicable;
 - (viii) 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 to his or her last known address, and the notice was returned as unclaimed or undeliverable.
- (3) The notice is sent by certified mail, return receipt requested.
- (4) 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.

(5) 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 mailing date of the notification of findings of vulnerable adult abuse/neglect and request for reconsideration, 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 mailing date of the notice, 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; ■ 1

(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 email notification to the:

(i) appellant;

(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 determines that the substantiated finding should be upheld 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) appellant;

(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 in writing by regular and certified mail, with return receipt requested, advising the CSW 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 mailing date of the reconsideration decision; 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.

(g) **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 by certified mail, return receipt requested, postage prepaid 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.

(h) **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.

(i) **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 mailed to the CSW by certified mail, return receipt requested, no later than the third business day following the date the decision is signed by the ALJ.

(j) **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.

(k) **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. ■ 2

(3) OCA Reconsideration Committee staff notifies the registrant of the OCA Reconsideration Committee decision.

INSTRUCTIONS TO STAFF 340:2-3-39.1

Issued 9-15-21

1. The Office of Client Advocacy (OCA) Reconsideration Committee is comprised of:

- (1) the grievance program supervisor or designee;
- (2) a programs manager or designee for OCA Advocacy;
- (3) a programs manager or designee from Developmental Disability Services;
- and
- (4) a programs manager or designee from Adult Protective Services.

2. When the Reconsideration Committee decision is to remove the registrant, OCA Reconsideration Committee staff notifies Oklahoma Human Services to update the Community Services Worker Registry database within five-business days.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

Revised ~~9-15-17~~ 9-15-21

(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), confer on the Office of Client Advocacy (OCA) the responsibility to establish~~ established and ~~maintain~~ maintains a fair, simple, and expeditious grievance system for resolution of grievances of:

(i) all children in the custody of Oklahoma Department of Human Services (DHS) (OKDHS) custody regarding:

(I) the substance or application of any ~~DHS~~ 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 ~~DHS~~ OKDHS, or of any child in ~~DHS~~ the custody of OKDHS;

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

(iii) all persons receiving ~~DHS~~ services from OKDHS Developmental Disabilities Services (DDS) ~~services;~~ 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 ~~DHS~~ OKDHS establish an ombudsman program for each OKDHS-operated institution and residential facility for ~~the intellectually disabled operated by DHS, including~~ individuals with intellectual disabilities that include an appeals procedure for the resolution of grievances and complaints of residents, their parents, and court-appointed guardians. ~~DHS~~ OKDHS conferred this responsibility on OCA.

(C) ~~DHS~~ 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 ~~(H)~~ (G) of this paragraph, collectively referred to as the "client" throughout this Section and Oklahoma Administrative Code (OAC) 340:2-3-46. Further grievance details for:

(A) ~~children in DHS custody regardless of placement are found at~~ any child served by OKDHS CWS is found at: ~~OAC 340:2-3-47 through 340:2-3-49;~~

(B) ~~DHS approved~~ OKDHS-approved foster parents are found at: OAC 340:2-3-50;

(C) ~~residents of the Robert M. Greer Center (Greer)~~ residents are found at: OAC 340:2-3-51;

(D) ~~Hissom class members~~ Class Members and persons who are transitioned to the community from state-run facilities are found at OAC: 340:2-3-52;

(E) ~~other DDS clients receiving community-based services in the community from DHS Developmental Disabilities Services (DDS)~~ are found at: OAC 340:2-3-53;

(F) residents of group homes for persons with developmental or physical disabilities ~~due to a developmental disability~~ subject to 10 O.S. §§ 1430.1 et seq., are found at: OAC 340:2-3-54; and

(G) clients receiving ~~DHS~~ OKDHS services who want to file a grievance about a problem, concern, or complaint for which another grievance system within ~~DHS~~ OKDHS does not exist are found at: OAC 340:2-3-55.

(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 ~~restraint,~~ reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance ~~programs~~ 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 ~~DHS~~ OKDHS, providers, and facility staff. Efforts are made ~~at the local level~~ 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 ~~with~~ directly to the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in Part 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 ~~DHS~~ 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) ~~of the Oklahoma Commission of Children and Youth (OCCY).~~ 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; 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 ~~may be~~ includes, but is not be limited to, a parent, guardian, guardian ad litem, foster parent, or a court-appointed legal custodian ~~appointed by a court.~~

(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 ~~DHS~~ OKDHS CWS.

(9) **"Discrimination"** ~~means differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law.~~

~~(10)~~ **"District director"** means a director of a district within one of the regional delivery areas, designated by ~~DHS~~ OKDHS CWS.

~~(11)~~(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.

~~(12)~~(11) **"Email"** communication with OCA or with the advocate general means an email sent to the email address: oca.grievances@okdhs.org.

~~(13)~~(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) ~~minors in DHS custody~~ children who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) ~~minors in DHS custody who do not live in a residential facility, including minors in foster care, the individual designated as LGC in the DHS county office where the grievant resides;~~

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

~~(D)~~(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

~~(E)~~(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) ~~"Grievance"~~ means a problem or concern with which an individual needs assistance to resolve, including a complaint of unfair treatment. ~~At the request of a client, an~~ An unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to a ~~DHS~~ 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 ~~of the client~~, the OKDHS employee or a facility or provider employee prepares a written statement of the client's complaint or refers ~~the client~~ 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 ~~DHS-operated shelter or residential facility for minors~~, a facility, agency, or provider that contracts with ~~DHS~~, 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) ~~DHS~~ **OKDHS grievances.** The subject of a ~~DHS~~ an OKDHS grievance includes:

(i) the substance or application of policy, rule, or regulation, of ~~DHS~~, but does not include policies, rules, and regulations of DHS-operated shelters and residential facilities for minors OKDHS or a child-placing agency;

(ii) a decision, act, or omission of an employee in a ~~DHS-operated facility~~; and includes case managers, ~~CW specialists~~ child welfare specialists, and county office employees; or

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

~~(C)~~ **Placement grievances.** A placement grievance is defined in ~~(b)~~ of this Section.

(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 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; ~~or 15GR016E, Notice of Summary Disposition of Foster Parent 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), Grievance Form, and dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. 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 DHS 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 DHS OKDHS Office for Civil Rights (OCR) and the LGC immediately forwards the grievance to the DHS 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 DHS OKDHS custody or a grievance with regard to an event that ~~was in the future but is now in the past~~, or when the dispute ~~about the event~~ is unlikely to occur again with regard to this client.

(D) **~~Duplicative~~ 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.** ~~The~~ When the grievance requires action by an individual or an entity ~~when DHS does not have authority or control~~ 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 ~~use of~~ external grievance or complaint systems that may be available ~~regarding the subject of the grievance~~.

(H) **Pending proceedings.** ~~The~~ When the grievance involves a matter that is the subject of a ~~decision 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) **Investigative Investigation findings.** ~~The~~ Investigation results of ~~an investigation~~ regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

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

(K) **Frivolous grievances.** A frivolous grievance does not state a substantive complaint or problem of ~~any substance~~. Before declining to ~~process~~ a grievance of this nature, the LGC contacts the grievant to inquire if ~~the grievant~~ 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)(~~k~~) of this subsection, the LGC dates and signs Form 15GR001P as received, 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) 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 subsection (a) of this Section. A grievance may also be filed ~~by or~~ on a client's behalf of ~~a client~~, by any person who knows the client and is interested in ~~the client's~~ 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 ~~DHS employees~~ OKDHS and ~~employees of residential, in-home supports, and vocational providers~~ provider employees.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may file a group grievance. At any time during the ~~processing of a~~ group grievance, process, an individual grievant may withdraw. When separate grievances are filed by two or more grievants, regarding an identical issue complaint, the grievants' interests of ~~each grievant~~ 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 of ~~the action~~. 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 ~~State Abuse Hotline~~ 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 ~~of the investigation~~. 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) **Grievance Required provider and facility grievance policies required.** Every provider and facility providing services to a client ~~per OAC 340:2-3-45(a)(2) who is 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) **Designation of LGC designation.**

(A) Every public and private facility and provider subject to ~~Part 5,~~ OAC 340:2-3-45 through 340:2-3-55, every ~~DHS~~ 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, Designation of Local Grievance Coordinator-Facilities and Provider Agencies, and submit it to OCA. The OCA advocate assigned to Greer serves as the LGC for Greer. ~~The LGC is an individual who~~ duties include:

- (i) ~~implements~~ implementing grievance policies and procedures;
- (ii) ~~has~~ maintaining knowledge of and experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) ~~functions impartially~~ impartial and ~~independently in~~ independent administration of the grievance processing system;
- (iv) ~~reports~~ 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, ~~completes the online OCA Grievance Course~~ and annually thereafter;
- (vi) ~~ensures that~~ meeting the two-business day deadline on client requests regarding how to file a grievance ~~are responded to within two business days;~~ and
- (vii) ~~is being~~ being accessible and available to meet with grievants in person.

(B) Each facility, provider, ~~DHS~~ OKDHS county office, and ~~each~~ DDS area office subject to this Part; displays, in a conspicuous place readily accessible to clients, a poster notifying clients of its the grievance system and the name of its LGC, ~~in a conspicuous place to clients, using Form 15GR017E, Grievance Poster—Child Welfare Services Contracted Facilities; Form 15GR018E, Grievance Poster—Oklahoma Department of Human Services (DHS) Child Welfare Services; Form 15GR019E, Grievance Poster—Developmental Disabilities Services (DDS) Providers; or 15GR020E, Grievance Poster—Oklahoma Department of Human~~

~~Services (DHS) Developmental Disabilities Services (DDS) Offices, as applicable using the appropriate form. ■ 5~~

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider, per ~~Part 5, OAC 340:2-3-45 through 340:2-3-55,~~ is subject to advocate general approval. Each provider and facility ~~other than a DHS-operated 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 ~~right to, and how to, access the grievance resolution procedures~~ grievance rights, using ~~Form 15GR004E, Notice of Grievance Rights—Minors in DHS Custody; Form 15GR005E, Notice of Grievance Rights—Children in DHS Custody and Care; Form 15GR006E, Notice of Grievance Rights—DDS Service Recipients (General); Form 15GR007E, Notice of Grievance Rights—Hisson Class Members; or Form 15GR008E, Notice of Grievance Rights—Foster Parents, as applicable~~ the applicable form. ■ 6 Notice is also provided to the guardian, when applicable. ~~Hisson class members~~ Class Members are provided notice, per OAC 340:2-3-52. Each provider or facility provides the required notice annually notifies the client, and the guardian when applicable, in writing of the right to file a grievance and how to access the grievance resolution procedures. ~~Providers or facilities use applicable Forms 15GR004E or 15GR006E. In addition, providers~~ 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 ~~by phone, fax, or email.~~

(6) **Advocate general deficiency report.** When the advocate general determines a deficiency exists in the a facility's or agency provider's grievance system ~~of a facility or agency provider,~~ 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 ~~as defined in (a) of~~ served by the grievance policy in this Section regarding:

- (i) any aspect of ~~the care of a client~~ care that ~~effects~~ affects the quality of the client's life;
 - (ii) the substance, application, or interpretation of ~~a policy, or rule, of a DHS-operated shelter or residential facility,~~ of a facility or agency that contracts with DHS OKDHS, or of a placement provider; or
 - (iii) any decision, behavior, or action of an employee, agent, or ~~DHS 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 ~~DHS OKDHS~~ Director.
- (e) **The grievance form.** A grievant files a grievance by obtaining Form 15GR001P, from the LGC, filling it out, and returning it to the LGC, or to the facility or to ~~DHS 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. 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. ■ 1
- (f) **Retaliation prohibited.** ~~No~~ A person filing a grievance ~~is~~ may not be retaliated against, or discriminated against or harassed, ~~solely or in part,~~ in reprisal for having ~~asserted filing~~ asserted a grievance, ~~or sought seeking~~ or sought seeking advice, or ~~inquired inquiring~~ inquired 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 340:2-3-47 and 340:2-3-50 respectively.
- (1) Filing and other time requirements contained in this Section are counted in ~~DHS business~~ 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 ~~DHS~~ 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. ~~DHS~~ 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. For grievances submitted by a client, Form 15GR009E 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 is provided to a client and not turned in, the facility tracks only the identification number copy of Form 15GR001P 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.

(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. 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.

(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, and sends a copy of Form 15GR001P or 15GR001E to OCA with the next quarterly grievance report.

(i) **Processing the ~~grievance form~~ grievances.** After completing Form 15GR001P, the grievant submits the form directly to the LGC, other facility employee, lockbox, or OCA. When the grievant completes and submits Form 15GR001E, 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 340:2-3-47. Foster parent grievances are processed per OAC 340:2-3-50. ■ 2 & 3

(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, 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, when the grievance is not resolved to the decision-maker's satisfaction, the LGC fills out Form 15GR002E, 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.

~~(A) For DHS grievances of children in DHS custody and care, the first level respondent may be the supervisor of the grievant's CWS specialist.~~

~~(B) For grievances regarding placements above the therapeutic foster care level made by CWS placement services, the first level respondent is the applicable CWS programs manager.~~

~~(C) For placement grievances regarding a specific foster child, the first level respondent is the applicable district director.~~

~~(D) When the child is also a DDS client, the first level respondent may be the DDS case manager supervisor.~~

~~(E) 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, attaches corresponding Form 15GR001P or 15GR001E, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within ~~three business~~ three-business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within ~~five business~~ five-business days of receipt of Form 15GR002E 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, and the grievance immediately proceeds to the second problem resolution level.

(5) Within ~~three business~~ 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~~ three-business days to accept or appeal the respondent's proposed resolution. When a decision is not communicated to the LGC within ~~three business~~ 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, 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~~ 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, ensures the corresponding Form 15GR001P (paper version) or 15GR001E (electronic version) 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 ~~DHS~~ OKDHS grievances, the ~~DHS~~ 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.

(3) The administrator or the administrator's designee responds to the grievance within ~~seven-business~~ seven-business days of receipt of Form 15GR002E by completing the applicable box in the second level section. 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 and the grievance immediately is processed as a contested grievance. A contested ~~DHS~~ OKDHS grievance is processed, per OAC 340:2-3-46. Contested facility grievances are processed per (m) of this Section.

(6) Within ~~three-business~~ 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 three-business days to accept or appeal the respondent's proposed resolution. When no decision is communicated to the LGC within ~~three-business~~

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, notifies those responsible for resolution of the grievance, and places Form 15GR002E 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 ~~DHS~~ OKDHS grievance is processed, per OAC 340:2-3-46. 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~~ Class Members or individuals who previously resided at NORCE or SORC after November 1, 2012. ~~Grievances at DHS-operated facilities are appealed as a contested grievance, per OAC 340:2-3-46.~~

(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~~ 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~~ 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 ~~the subject of a DHS~~ an OKDHS grievance is such that time is of the essence, with the ~~approval of the advocate general~~ general's or the advocate general's designee 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. 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 ~~DHS~~ OKDHS county offices are required to submit to OCA or to the advocate general are submitted by email at oca.grievances@okdhs.org.

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

INSTRUCTIONS TO STAFF 340:2-3-45

Issued 9-15-17 Revised 9-15-21

1. **Oklahoma ~~Department of Human Services (DHS)~~ (OKDHS) local grievance coordinators (LGC)s order Form 15GR001P, Grievance Form, from the ~~DHS~~ OKDHS warehouse. Private provider and facility LGCs obtain copies of Form 15GR001P from the Office of Client Advocacy (OCA) by calling 1-405-522-2720 or 1-800-522-8014. Those who need assistance to complete a grievance may contact the OCA grievance unit. A grievance received on paper other than on Form 15GR001P, is attached to Form 15GR001P and filled out by the LGC for the grievant.**
2. **Form 15GR001P is printed in duplicate sets with a yellow copy. The grievant submits the white copy and keeps the yellow copy.**
3. **When someone other than the LGC receives a grievance, he or she submits it directly to the LGC within ~~one business~~ one-business day.**

340:2-3-46. Contested grievances appealed to the State Office

Revised ~~9-15-17~~ 9-15-21

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma ~~Department of Human Services (DHS)~~ (OKDHS) grievances, ~~facility grievances at DHS-operated facilities,~~ and provider grievances of ~~Hissom class members~~ Class Members. For grievances of children being served by Child Welfare Services, refer to OAC 340:2-3-47. For ~~contested~~ grievances of approved foster parents refer to Oklahoma Administrative Code (OAC) 340:2-3-50.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) 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, Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding Form 15GR001P (paper version) or 15GR001 E (electronic version), Grievance Form, and other documents and information relevant to the subject matter of the grievance.

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

- (1) corresponding Form 15GR001P or 15GR001E;
- (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(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, Contested Grievance Transmittal, 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 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. 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 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). 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 and returns it to the OCA grievance liaison within three-business days. Upon OCA receipt of Form 15GR011E, the grievance is processed for review by GARC, per OAC 340:2-3-64.

340:2-3-47. Grievances of minors in ~~OKDHS custody living in private residential facilities being served by Child Welfare Services~~

Revised 7-1-139-15-20

(a) **Application.** This Section describes grievance processes relating to grievances of minors in the Oklahoma Department of Human Services (OKDHS) custody who are residing in a private residential child care center which contracts with OKDHS children being served by Child Welfare Services (CWS).

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

(c) **Notice of grievance rights.** The applicable Child Welfare staff gives Form 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, to the client within 24 hours of placement of the client in a private residential placement, and annually thereafter. This form is used to identify the local grievance coordinator (LGC) for the facility and to explain the client's right to grieve. After the client signs the form, a copy is made for the client and the original is maintained in the permanent record for the client. If the designated LGC changes, the facility notifies the clients and the person(s) responsible for the clients' custody of the name and contact information of the new LGC within ten business days. 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. ■ 1 The notice explains the child being served by CWS's right to grieve and, when applicable, identifies the relevant local grievance coordinator (LGC).

(d) **Filing and processing of grievance at the facility** **Grievance defined.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed per OAC 340:2-3-45 unless otherwise provided in this Section. 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(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(c)(2), situations that are not grievable by children being served by CWS under the grievance system are: ■ 2

(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. 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) ~~Contested grievances~~ **Grievance filing and processing.** ~~Contested OKDHS grievances of residents are processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with this subsection. When a decisionmaker decision maker elects to appeal a grievance, within three business days of the request the LGC transmits to the chair of the facility's board of directors, or an appeals committee designated by the board, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, which has attached to it the corresponding Form 15GR001E, Grievance Form, and other documents and information relevant to the subject matter of the grievance. The chair of the board of directors or appeals committee responds within ten business days by sending a written response to the LGC. A copy is attached to the applicable quarterly grievance report sent to the OCA grievance liaison per OAC 340:2-3-45(h)(2). Within three calendar days of receipt of the response, the LGC communicates the response to the decision maker. This concludes the grievance process and the grievant's administrative remedies have been exhausted. 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. ■ 1 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. ■ 3

(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. ■ 4

(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. ■ 5

(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. ■ 6

(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. ■ 7

(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. ■ 8

(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.

■ 9

(i) 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). 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. ■ 10

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

INSTRUCTIONS TO STAFF 340:2-3-47

Issued 9-15-21

1. A grievance for a child being served by Child Welfare Services (CWS) must be filed either online at www.okfosteryouthmatters.org, by phone at 1-800-522-8014, or by completing Form 15GR001E, Grievance Form, and turning it in to the local grievance coordinator (LGC) or designee who completes the online form on the grievant's behalf.

2. (a) Upon receipt of a complaint, the complaint is reviewed to determine if it meets the criteria for a grievance; an investigation for retaliation, harassment, or discrimination; or another disposition.

(b) When the complaint presents a grievable issue, the OCA Grievance Unit notifies the grievant in writing and explains the grievance resolution process.

(c) The OCA Grievance Unit determines if an intra-agency referral is appropriate and, when so, makes necessary referrals. Complaints of children being served by CWS subject to an intra-agency referral are deemed closed when verification is received that follow-up was taken.

(d) When information contained in the initial complaint of a child being served by CWS is insufficient to determine an appropriate disposition, a preliminary

inquiry may be completed to obtain additional, necessary facts to determine the appropriate disposition of a complaint.

3. (a) In most CWS cases, the initial resolution respondent is the supervisor of the worker against whom the complaint is made. When the supervisor is named in the complaint, the initial resolution respondent is the district director for that district.
(b) The documentation submitted to the initial resolution respondent includes a copy of the complaint filed by the grievant and documentation of any information developed by the OCA Grievance Unit during the disposition process.
4. The initial resolution level respondent develops the proposed resolution in consultation with the involved parties including the grievant. The initial resolution level respondent submits the proposed resolution in writing on OKDHS letterhead. When the initial resolution level respondent considers the matter not grievable, documentation of additional facts supporting this position are made available to the OCA Grievance Unit, who determines if the matter remains grievable.
5. Upon acceptance of the proposed resolution, the OCA Grievance Unit documents closure in the file and the database and sends written notice to the grievant and the relevant respondent. This notice informs the grievant and the relevant respondent that the grievance is resolved and the complaint file is closed.
6. When the grievant requests mediation and the criteria for mediation are met, the OCA Grievance Unit requests mediation through the Oklahoma Commission on Children and Youth.
7. (a) For CWS, the first elevation respondent is generally the district director for the CWS district in which the case originated. When the district director was the initial resolution level respondent, the OCA Grievance Unit identifies the individual who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure, and that individual acts as the first elevation respondent.
(b) The documentation submitted to the first elevation respondent must include a copy of the original complaint, any supporting documentation submitted to the initial resolution level respondent, the resolution proposed by the initial resolution level respondent, and other relevant documentation generated during the process.
8. The first elevation respondent must develop the proposed resolution in consultation with the involved parties including the grievant. When complete, the first elevation respondent submits the proposed resolution in writing on OKDHS letterhead to the OCA Grievance Unit.
9. When the resolution proposed by the first elevation respondent is accepted by the decision-maker, the OCA Grievance Unit sends notice and documents closure in the file, per Instructions to Staff # 5 of this Section.
10. When the resolution proposed by the State Office administrator is accepted by the decision-maker the OCA Grievance Unit sends written notice to the State Office administrator, county staff, and the grievant.

340:2-3-48. Grievances of minors in OKDHS operated shelters and group homes [REVOKED]

~~(a) **Application.** This Section describes processes relating to grievances of minors in DHS custody who are residing in an Oklahoma Department of Human Services (OKDHS) operated shelter or residential facility.~~

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

~~(c) **Notice of grievance rights.** Form 15GR004E, Notice of Grievance Rights: Minors in OKDHS Custody, is given to the client within 24 hours of placement of the client in the facility by the shelter or group home Child Welfare (CW) specialist. This form is used to identify the local grievance coordinator (LGC) and to explain the client's right to grieve. After the client signs the form, a copy is given to the client and the original is maintained in the permanent record for the client. If the designated LGC changes, the shelter or group home notifies the clients and the person(s) responsible for the clients' custody of the name and contact information of the new LGC within ten business days.~~

~~(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.~~

~~(e) **Contested grievances.** Contested grievances of residents are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. When a grievant in an OKDHS operated shelter or residential facility asks to appeal a grievance, the appeal is processed in accordance with OAC 340:2-3-46.~~

340:2-3-49. Grievances of minors in OKDHS custody and youth in voluntary care living in other residential settings [REVOKED]

~~(a) **Application.** This Section describes processes relating to grievances of minors in Oklahoma Department of Human Services (OKDHS) custody who are residing in their own home, minors in OKDHS custody and youth in voluntary care in any type of foster care, and minors in OKDHS custody or youth in independent living who want to file an OKDHS grievance.~~

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

~~(c) **Notice of Grievance Rights.** The assigned Child Welfare worker gives Form 15GR004E, Notice of Grievance Rights: Minors in OKDHS Custody, to the placement provider and to the client upon placement of the client, and annually thereafter. This form is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client signs the form, a copy is given to the client and the original is maintained in the permanent record for the client.~~

~~(d) **Filing and processing of grievance.** If the grievant files an OKDHS grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.~~

~~(e) **Contested grievances.** Contested grievances of residents are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.~~

340:2-3-50. Grievances of foster parents Foster parent grievances

Revised 9-15-16 ~~9-15-21~~

(a) **Application.** This Section describes processes relating to foster parent grievances approved by the ~~Oklahoma Department of Human Services (DHS)~~. Section 1-9-120 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-120) confers on ~~DHS~~ Oklahoma Human Services (OKDHS) 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 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR008E, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as a ~~DHS~~ 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 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, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent. ■ 1

(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 ~~DHS~~ OKDHS policy, rule, or regulation; or
- (B) a decision, act, or omission of a ~~DHS~~ 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(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(c)(2), situations that are not grievable by foster parents under this grievance system are: ■ 2

- (A) a court decision of a court;
- (B) findings of a child abuse and neglect assessment or investigation ~~or assessment~~ 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 ~~DHS~~ 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 a ~~DHS~~ an OKDHS employee. When retaliation is alleged, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) ~~Allegations of retaliation~~ **Retaliation or harassment allegations.** ~~Allegations of retaliation~~ Retaliation or harassment allegations, per OAC 340:2-3-38(b), are processed, per that Section.

(4) ~~Allegations of discrimination~~ **Discrimination allegations.** ~~Allegations of discrimination~~ 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 ~~DHS~~ OKDHS Office for Civil Rights (~~OCR~~) and the FCO immediately forwards the complaint to the ~~DHS~~ OKDHS OCR administrator, and informs the foster parent in writing.

(e) **Filing and processing a grievance.** ~~A grievance filed by a foster parent is processed as a DHS grievance, per OAC 340:2-3-45 unless otherwise provided in this Section.~~

(1) Foster parent grievances are filed with the Oklahoma Commission on Children and Youth (OCCY) Office of Juvenile System Oversight (~~OJSO~~) ~~of the Oklahoma Commission on Children and Youth (OCCY).~~ 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 ~~or by phoning 1-405-606-4900 or to 1-866-335-9288.~~ When a course of misconduct is alleged, the foster parent grievance must be filed within 45-calendar days of the most recent occurrence.

~~(3)~~(2) 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)~~(3) Foster parent grievances are deemed timely-resolved within no more than 60-calendar days of the complaint filing date.

(f) **Informal Problem Resolution (IPR) Initial Resolution Level.**

(1) Within three-business days following receipt of the grievance ~~from the OCA Intake Unit,~~ the FCO identifies the respondent and submits the grievance and supporting documentation to the respondent. ■ 3

(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 ~~immediately proceeds~~ may proceed to first ~~level problem resolution elevation.~~ ■ 4

(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

~~IPR initial resolution~~ level, the grievance proceeds to the first ~~level problem resolution~~ elevation unless the decision-maker requests mediation. ■ 5

(g) **Foster parent mediation.** When the decision-maker rejects the respondent's proposed resolution, the decision-maker may request grievance mediation ~~of the grievance~~. ■ 6

(1) When the decision-maker chooses not to request mediation after rejecting the respondent's proposed resolution, the grievance proceeds to the first ~~level problem resolution process~~ 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 ~~counts from the mediation date when computing deadlines~~ computes deadlines from the date mediation concluded.

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

(h) **First level problem resolution elevation.**

(1) Within three-business days after the grievant requests a first ~~level review~~ elevation, the FCO identifies the first ~~level~~ elevation respondent and submits the complaint and supporting documentation to the first ~~level~~ elevation respondent. ■ 7

(2) The FCO monitors timely response by the first ~~level~~ elevation respondent. Within five-business days following receipt of the grievance from the FCO, the first ~~level~~ 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 ~~immediately proceeds~~ may proceed to the "~~contested grievance~~" second elevation level. ■ 8

(3) Within three-business days following receipt of the first ~~level~~ 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 ~~level~~ elevation respondent's proposed resolution, the grievance proceeds to the "~~contested grievance~~" level second elevation. ■ 9

(i) **Contested grievances Second elevation.**

(1) ~~When a~~ Within three-business days after the decision-maker asks to appeal a grievance to the State Office administrator, ~~within three business days of the request~~ requests a second elevation, the FCO prepares and sends the following (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 ~~by the grievant to said~~ all prior proposed resolutions; and
- (D) instructions for response, including any relevant deadlines.

(2) ~~The~~ Within seven-business days following receipt of the grievance from the FCO, ~~the State Office administrator who receives a contested grievance responds to the grievant within seven-business days~~ reviews the grievance, interviews the foster parent and any other necessary persons, prepares a proposed resolution, and submits the resolution to the FCO. ~~The State Office administrator sends his or her response to the FCO.~~ The contested level response proposed resolution must be on DHS OKDHS letterhead and include:

- (A) the proposed resolution and implementation;
- (B) ~~the person(s)~~ 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 ~~written~~ 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 ~~immediately proceeds~~ may proceed to the Grievance and Review Committee (GARC), per OAC 340:2-3-64(b). 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. ■ 10

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

INSTRUCTIONS TO STAFF 340:2-3-50

Issued 9-15-16 Revised 9-15-21

1. A foster parent grievance must be filed either online at www.okfosterparentvoices.org or ~~via~~ by phone at ~~1-866-335-9288~~ 800-522-8014, to be valid.
2. (a) Upon receipt of a complaint the Office of Client Advocacy (OCA) intake unit reviews the complaint to determine if it meets the criteria for a grievance, an investigation for retaliation, harassment, or discrimination, or another

disposition. The intake unit forwards the complaint disposition to the Foster Care Ombudsman (FCO).

(b) When the complaint presents a grievable issue, the FCO notifies the grievant in writing and explains the grievance resolution process.

(c) The FCO determines if an intra-agency referral is appropriate and, if so, makes necessary referrals. Foster parent complaints subject to an intra-agency referral are deemed closed ~~at the time the intra-agency referral is made~~ when verification is received that follow-up was taken on the referral.

(d) When information contained in the initial foster parent complaint is insufficient to determine an appropriate disposition, a preliminary inquiry may be completed to obtain additional, necessary facts to determine the appropriate disposition of a complaint.

3. (a) In most Child Welfare Services (CWS) cases, the ~~Informal Problem Resolution (IPR)~~ initial resolution respondent is the district director or foster care field manager for the district where the complaint originated. When the district director or foster care field manager is named in the complaint, the ~~IPR~~ initial resolution respondent is the deputy director for that region.

(b) In most Developmental Disabilities Services (DDS) cases, the ~~IPR~~ initial resolution respondent is the DDS foster care manager or assistant field manager for the area where the complaint originated. When the DDS foster care manager or assistant field manager is named in the complaint, the ~~IPR~~ initial resolution respondent is the area manager for the DDS area.

(c) The documentation submitted to the ~~IPR~~ initial resolution level respondent includes a copy of the complaint filed by the grievant and documentation of any information developed by the OCA Intake Unit and the FCO during the disposition process.

4. The ~~IPR~~ initial resolution respondent develops the proposed resolution in consultation with the involved parties including the grievant. The ~~IPR~~ initial resolution respondent submits the proposed resolution in writing on DHS Oklahoma Human Services (OKDHS) letterhead. When the ~~IPR~~ initial resolution respondent considers the matter not grievable, documentation of additional facts supporting this position are made available to the FCO, who determines if the matter remains grievable.
5. Upon acceptance of the proposed resolution, the FCO documents closure in the file and the database and sends written notice to the grievant and the relevant respondent. This notice informs the grievant and the relevant respondent that the grievance is resolved and the complaint file is closed.
6. When the grievant requests mediation and the criteria for mediation are met, the FCO requests mediation through the Oklahoma Commission on Children and Youth (OCCY).
7. (a) For CWS, the first ~~level~~ elevation respondent is generally the deputy director for the CWS region in which the case originated. When the deputy director was the ~~IPR~~ initial resolution respondent, the FCO identifies the individual who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure, and that individual acts as the first ~~level~~ elevation respondent.

(b) For DDS, the first level elevation respondent is generally the area manager for the DDS area in which the case originated. When the area manager was the IPR initial resolution respondent, the FCO identifies the individual with authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure and that individual acts as the first level respondent.

(c) The documentation submitted to the first level elevation respondent must include a copy of the original complaint, any supporting documentation submitted to the IPR initial resolution respondent, the resolution proposed by the IPR initial resolution respondent, and other relevant documentation generated during the process.

8. The first level elevation respondent must develop the proposed resolution in consultation with the involved parties including the grievant. When complete, the first level elevation respondent submits the proposed resolution in writing on DHS OKDHS letterhead to the FCO.
9. When the resolution proposed by the first level elevation respondent is accepted by the decision-maker the FCO sends notice and documents closure in the file, per Instructions to Staff # 5 of this Section.
10. When the resolution proposed by the State Office administrator is accepted by the decision-maker the FCO sends written notice to the State Office administrator, county staff, and the grievant.

340:2-3-56. Foster Care Ombudsman (FCO) services

Issued 9-15-16 Revised 9-15-21

(a) Legal Authority 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) of the Oklahoma Commission on Children and Youth (OCCY) alleging that an Oklahoma Department of Human Services (~~DHS~~) (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 ~~DHS~~ 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 ~~care parent~~ parent grievances. OCA designated the FCO. OCA conferred the FCO with responsibility for fulfilling the duties set forth in (e) of this Section ~~on~~ the FCO.

(b) Scope.

(1) The FCO provides services relating to complaints brought by foster parents` against employees of ~~DHS~~ OKDHS or child-placing agencies.

(2) ~~Per 10A O.S. § 1-9-112(D)(2), this~~ This Section shall not apply be construed to include any complaint by a the foster parent ~~regarding the result of a criminal, administrative, or civil proceeding for a violation of any law, rule, or contract provision by that foster parent or the action taken by DHS or any child-placing~~

agency in conformity with the result of any such proceeding 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) 340:2-3-2, 340:2-3-45, and 340:2-3-50.

(d) **Confidentiality.** Information in OCA records relating to complaints filed with the FCO by foster parents ~~with the FCO~~ 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 ~~DHS~~ 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;

(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;

(3) referring cases for mediation, when appropriate, per OAC 340:2-3-50(g);

(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; ■ 1

(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, ~~Child Welfare Services~~ CWS, Developmental Disabilities Services, and OCCY, ~~and~~ OJSO in efforts to improve the foster care system.

(f) **Initial disposition of the complaint.** Upon receipt, the ~~OCA Intake Unit~~ 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. ■ 2

(1) **Grievable issues.** Except for the limitations listed in OAC 340:2-3-50(h), matters that can be the subject of a grievance include:

(A) the substance or application of any policy or rule of ~~DHS~~ OKDHS or its agents; or

(B) any decision or action by a ~~DHS~~ an OKDHS employee or its ~~agent~~ agents; or

(C) a violation by a ~~DHS~~ 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 ~~OCA Intake Unit~~, ~~working in consultation with 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 ~~OCA Intake Unit forwards the complaint to the FCO. 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 ~~the referral is made~~ any necessary follow-up is completed. ■ 3

(3) 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 ~~OCA Intake Unit, in consultation with~~ the FCO, to determine appropriate disposition, a preliminary examination may be completed. ■ 4

INSTRUCTIONS TO STAFF 340:2-3-56

~~Issued 9-15-16~~Revised 9-15-21

1. Throughout the process, the Foster Care Ombudsman (FCO) tracks all data collected including, but not limited to, the number of complaints received, the number of complaints resolved, the nature of the complaints, and any other information deemed necessary for Oklahoma ~~Department of Human Services (DHS)~~ (OKDHS) Leadership Team quarterly reports and annual legislative report.
2. A foster parent grievance must be filed either online at www.okfosterparentvoices.org, or by phone at ~~1-866-335-9288, to be valid 800-522-8014; or by completing Form 15GR001E, Grievance Form; and turning it in to the local grievance coordinator (LGC) or designee, who completes the online form on the grievant's behalf.~~
3. (a) Office of Client Advocacy (OCA) Intake staff, in consultation with the FCO or designee, determines if a non-grievable issue is referred to another part of ~~DHS~~ OKDHS for attention, such as the Director's Helpline.
(b) If the complaint presents a grievable issue, the FCO notifies the grievant in writing of this fact and explains, in the same writing, the grievance resolution process.
4. (a) In most cases, the referral process consists of the FCO determining which ~~DHS~~ OKDHS office is best able to address the foster parent's issue and providing the foster parent in writing with contact information for that office.
(b) In cases where referral to the Director's Helpline is appropriate, the FCO forwards the complaint to the Director's Helpline.
(c) When the FCO determines the foster parent's needs are best served by directly forwarding a complaint to another ~~DHS~~ OKDHS office, the FCO may, at his or her discretion, directly forward the complaint.
(d) When the procedure in (a), (b), or (c) of this Instruction is followed, the FCO informs the foster parent in writing of the intra-agency referral. This notice also includes a request that the foster parent contact the FCO when the office referred to does not respond to the foster parent.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

Revised ~~9-15-16~~ 9-15-21

(a) **Application GARC application**. ~~The Grievance and Abuse Review Committee (GARC) reviews unresolved contested grievances of children in Oklahoma Department of Human Services (DHS) (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).~~

(b) **The 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 ~~the names of the~~ resident, grievant, guardian, parent(s), case manager, and OCA advocate names;
- (2) a ~~summary of the~~ grievance process summary, resolutions offered at each level, and the decision-makers' responses;
- (3) the applicable statutes, policies, and ~~other~~ 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, Grievance Form, and 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(c) **GARC review summary**. ~~For children in DHS custody or~~ 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), 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~~ 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(l), 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 in ~~DHS custody~~ 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 ~~resolution of the 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 ~~resolution of the 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) **~~Distribution of 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 ~~(DHS)~~ (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 ~~DHS~~ 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 ~~DHS~~ 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 ~~DHS~~ OKDHS Director.

(2) When the resolution of the grievance involves an action to be taken by a ~~DHS~~ 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 ~~DHS~~ 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) ~~**DHS OKDHS Director's review of a GARC recommendation review.**~~ Upon receipt by the advocate general of a proper and timely written request for review by the ~~DHS~~ OKDHS Director, per (e) of this Section, the advocate general or designee transmits the request and the GARC report to the ~~DHS~~ OKDHS Director.

(1) Within 15-business days following receipt of the GARC report, the ~~DHS~~ 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 ~~DHS~~ 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 ~~DHS~~ OKDHS Director's review. The decision-maker is informed this concludes the grievant's administrative remedies. When the grievant is a ~~minor or~~ 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 ~~of the Oklahoma Commission for Children and Youth~~.

(j) ~~**Monitoring of resolution Resolution monitoring for children in DHS OKDHS custody or and DDS recipients.**~~ When the resolution of the grievance involves an action to be taken by a ~~DHS~~ 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 ~~DHS~~ OKDHS Director in writing.

PART 9. ADVOCACY PROGRAMS

340:2-3-71. Office of Client Advocacy (OCA) general advocacy services

Revised ~~9-17-189-1-21~~

(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 through 340:2-3-75.

(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 (~~DHS~~) (OKDHS) to establish an ombudsman program for each institution and residential facility for persons with intellectual disabilities operated by ~~DHS~~ OKDHS. ~~DHS~~ 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 and 340:2-3-72.

(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 ~~DHS~~ OKDHS and OCA to provide advocacy services to individuals certified by the court as members of the plaintiff class, known as ~~Hissom class members~~ Class Members (HCM)s. These services are outlined in OAC 340:2-3-71 and 340:2-3-73.

(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 and 340:2-3-73.

(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 and OAC 340:2-3-75 .

(b) **Definitions.** The following words and terms, when used in OAC 340:2-3-71 through 340:2-3-75 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

(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 DHS 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. ■ 2 Training includes the rights of DDS clients under federal and state law. ■ 3

(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. ■ 5

(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. ■ 4 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. ■ 6

(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. ■ 6 & 7

(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. ■ 8

(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 340:2-3-32 through 340:2-3-39.

(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 340:2-3-35. ■ 9

(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 340:2-3-33.

(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. ■ 10

(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.

INSTRUCTIONS TO STAFF 340:2-3-71

Revised 9-17-189-15-21

- 1. Office of Client Advocacy (OCA) files.** OCA maintains a client file for each ~~Hissom class member~~ Class Member (HCM) and other Developmental Disabilities Services (DDS) service recipient it serves, including former Northern Oklahoma Resource Center of Enid (NORCE) and Southern Oklahoma Resource Center (SORC) residents, Robert M. Greer Center (Greer) and Laura Dester Children's Center (SHIELD) residents, and persons provided short-term OCA advocacy services, per Oklahoma Administrative Code (OAC) 340:2-3-75. Each client's paper file contains legal documents, documents that OCA originated, and documents that do not exist in electronic format. The OCA advocate ensures all service reviews, Form 06CB035E, Site Visit Report (multiple reports may be included), Form 15GR006E, Notice of Grievance Rights DDS Service Recipients, and Form 15GR007E, Notice of Grievance Rights - Hissom Class members Members, are completed and stored in the Document section of OCA's Client Contact Manager (CCM). OCA advocates complete all required documentation ensuring it is concise, accurate, and timely.
- 2. OCA advocate training.**
 - (1) Before a new OCA advocate is assigned to represent clients, the OCA advocate attends DDS Foundations Training or its equivalent, unless the OCA advocate previously completed training and receives on-the-job training.
 - (2) Before an OCA advocate assumes responsibility for a client, the OCA advocate reviews the OCA client file, discusses the case with the previous OCA advocate, when possible, and becomes familiar with essential information about the client including specialized supports, rights, restrictions, intrusive procedures, and pending informal problem resolution activities and grievances. The OCA advocate also completes individual-specific training when his or her supervisor or the OCA advocacy programs administrator determines it is warranted.
 - (3) OCA advocates avail themselves of appropriate opportunities for professional development and remain current in knowledge regarding relevant laws, policies, procedures, and best practices. OCA advocates complete required training, per Oklahoma ~~Department of Human Services (DHS)~~ (OKDHS) policy and the OCA "Training Guide for Community Advocates." OCA advocates complete a minimum of 20 hours of training per year.
- 3. Client rights.** Sources of information regarding clients' rights include, but are not limited to: OAC 340:2-5-40; OAC 340:100-3-1.2; OAC 317:35-13-1; and OAC 612:10-1-6; the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6000 et seq.); Section 504 of the Rehabilitation Act of 1973 (29

U.S.C. § 794); the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); and the Civil Rights of Institutionalized Persons Act (42 U.S.C. § 1997 et seq.).

4. **Scope of representation.** In assigning OCA advocates to represent clients, OCA avoids actual or perceived conflicts of interest that could prevent an OCA advocate from being objective about the client's interests and preferences. For example, an OCA advocate is not assigned to represent an individual related to the OCA advocate by blood or marriage, or to represent an individual receiving services from a person related to the OCA advocate. OCA advocates comply with OAC 340:2-1-8, the Rules of the Ethics Commission, and Chapter 62 of Title 74 of the Oklahoma Statutes. An OCA advocate represents the client's interests independent of the OCA advocate's own biases, preferences, and belief systems. In advocating for the client's interests and preferences, an OCA advocate does not support any action by the client or others that constitutes criminal activity or places the client at imminent risk of serious harm. OCA advocates provide clients with information necessary for informed and voluntary decision-making with knowledge of the potential consequences of a decision. The OCA advocate with the client and the client's Personal Support Team (PST), explores alternatives that minimize risk of harm to the client's health, safety, or well-being.
5. **OCA advocate changes.** OCA advocacy caseloads are assigned geographically to maximize the OCA advocate's time. Some clients require more advocacy services than others and consideration is made when assigning caseloads. Caution is exercised when changing assigned OCA advocates in order to foster continuity and promote relationships. OCA cannot guarantee the availability of a particular OCA advocate to provide services to a specific client. Requests made by a client or client's representative to change an assigned OCA advocate are reviewed by the advocacy programs administrator and decided on a case-by-case basis. Requests are referred to the OCA advocate's supervisor to evaluate the basis for the request and determine if another action may resolve the matter. When the request to change OCA advocates cannot be resolved informally, the programs administrator determines the response to the request. OCA complies with all federal and state laws prohibiting discrimination based on race, color, national origin, sex, age, religion, or disability, unless authorized by law. In order to ensure OCA advocates are given timely and adequate notice of PST meetings, emergency meetings, and similar meetings, appropriate persons are informed when there is a change in OCA advocate assignment. When a client is transferred from one OCA advocate to another, protocols in (1) through (6) of this Instruction are followed.
 - (1) The transferring OCA advocate completes the "OCA Case File Transfer" and organizes the client case file.
 - (2) The transferring OCA advocate is responsible for documenting and entering a summary of the client's current status, including any pending issues or concerns, into the OCA database.

- (3) The transferring OCA advocate briefs the receiving OCA advocate on the case and any pending matters or concerns and documents this in a contact sheet.
- (4) The transferring OCA advocate notifies the client of the change of advocate. When feasible, the transferring and receiving advocate visit the client together to introduce the client to the receiving OCA advocate and explain the change.
- (5) When the case is ready for transfer, the transferring OCA advocate's supervisor reviews the case for approval and transfers the case to the receiving OCA advocate's supervisor. The receiving supervisor is responsible for reviewing the case to ensure it is complete. The receiving supervisor is responsible for making the case change in the OCA database. The receiving OCA advocate is responsible for providing advocacy beginning on the date the receiving supervisor assigns the case in the database.
- (6) Upon receipt of the case, the receiving OCA advocate sends an email or letter to the case manager, guardians, or family informing them of the change.
6. OCA advocate role in resolving problems. The OCA advocate utilizes the client's case manager as a primary resource for resolving a client's support deficiencies. The OCA advocate's role is to report service deficiencies to those responsible for providing services. An OCA advocate takes immediate action, appropriate under the circumstances, in situations where the client is at imminent risk of harm, such as preventing staff from using a defective piece of adaptive equipment. Following an action of this nature the OCA advocate immediately notifies the DDS case manager, the case manager's supervisor, or the DDS on-call administrator to report the circumstances that prompted the OCA advocate's action; and requests prompt follow-up to address the situation and prevent a reoccurrence. An OCA advocate does not function as a case manager or a provider of direct contact services for a client.
7. Informal problem resolution. The OCA advocate attempts to resolve all identified issues requiring informal problem resolution within 30-calendar days. Issues not resolved within 30-calendar days must be staffed with the OCA advocate's supervisor and documented in the OCA database. Informal problem resolution activities include, but are not limited to:

 - (1) contacting the case manager, seeking to resolve problems at the lowest possible level of administrative responsibility;
 - (2) requesting a PST meeting;
 - (3) identifying and articulating client concerns during PST meetings;
 - (4) acting to facilitate problem resolution;
 - (5) representing the preferences of the client in PST meetings, when known, and when capacity is not an issue;
 - (6) facilitating informed-consent decision-making by the client or guardian(s);
 - (7) identifying acceptable alternatives;

- (8) filing an OCA advocate's inquiry, per OAC 340:2-3-51 or 340:2-3-52, as applicable;
 - (9) advocating for proper implementation of federal and state laws and changes to ~~DHS~~ OKDHS rules;
 - (10) facilitating information and referral on the client's behalf with ~~DHS~~ OKDHS staff or other persons or entities who can provide problem resolution or support services; and
 - (11) assisting with mediation arrangements.
8. Grievances.
- (1) When an OCA advocate files a grievance against ~~DHS~~ OKDHS on behalf of a DDS service recipient, the grievance format includes at a minimum, the:
 - (A) client's name;
 - (B) grievant, when other than the client;
 - (C) client's guardian, when applicable, provider, case manager, and OCA advocate;
 - (D) issue grieved;
 - (E) facts relevant to the grievance;
 - (F) grievant's contentions;
 - (G) relevant statutes, policies, and other authorities;
 - (H) proposed solution; and
 - (I) OCA advocacy position.
 - (2) For each subsequent level the grievance is submitted for resolution, the grievance format used also provides the procedural history of the grievance including a summary of the responses to the grievance at each level it was considered and relevant documentation.
9. Referral to OCA advocate. The OCA Intake Unit may refer allegations to the OCA advocate when the alleged facts are insufficient to warrant an investigation. These referrals are sent to the OCA advocate to assess client safety, obtain additional information to determine if an investigation is warranted, and respond with appropriate advocacy follow-up to the allegations. OCA advocates adhere to the procedures listed in (1) through (4) of this Instruction.
- (1) Within five-business days of the intake date, the OCA advocate:
 - (A) conducts a face-to-face visit with the victim, unless the OCA Intake Unit requests additional information in order to make an appropriate case disposition or a safety concern exists, in which case the response time is determined by the OCA advocate's supervisor;
 - (B) researches the referral to determine if any additional information exists that may warrant a change in disposition to investigate. This includes reviewing the:
 - (i) entire referral in the OCA database; and
 - (ii) DDS CCM for any related documentation, such as incident reports, medical records, and client records in the home;
 - (C) staffs the case immediately with his or her supervisor when any information obtained may warrant a change in disposition. When

information is obtained that warrants a change in disposition, the OCA advocate's supervisor immediately notifies the OCA Intake Unit supervisor. The OCA advocate develops an advocacy plan with his or her supervisor that includes target dates when information is not obtained that warrants a change in disposition; and

(D) notifies the guardian or next of kin of OCA's receipt of the allegation.

(2) The OCA advocate does not disclose the reporting party's identity ~~of the reporting party~~.

(3) The OCA advocate documents all work on the referral in OCA CCM.

(4) The OCA advocate informs his or her supervisor when all issues identified in the referral are resolved. When the supervisor agrees all issues are sufficiently resolved, the supervisor instructs the OCA advocate to provide a summary of the findings to the guardian or next of kin and closes the "Refer to Advocate" case. "Refer to Advocate" cases must be resolved and closed within 30-calendar days of the intake date. Extensions may be approved by the OCA advocate's supervisor, when warranted.

10. Guardian's authority to make end-of-life decisions. A guardian does not have authority to consent to a do-not-resuscitate (DNR) order merely because he or she is a ward's guardian. Oklahoma's Guardianship and Conservatorship Act requires a guardian to obtain a court order that authorizes the guardian to make DNR decisions on behalf of a ward, per 30 O.S. § 3-119(1). In the absence of an order, a guardian can only communicate to a physician, facts about the known values and preferences of the ward, on the basis of which the physician can determine if there is clear and convincing evidence of the client's desires regarding a DNR order. When a client has never had the ability to communicate, verbally or non-verbally, his or her preferences with regard to end-of-life issues, then clear and convincing evidence does not exist.

340:2-3-72. Office of Client Advocacy (OCA) services specific to residents of Robert M. Greer Center (Greer) residents and Laura Dester Children's Center (SHIELD)

Revised 9-17-189-15-21

(a) **Representation.** OCA advocacy services are provided to Greer and SHIELD residents consistent with Oklahoma Administrative Code (OAC) 340:2-3-71 and 340:2-3-72.

(b) **Grievance coordination.** OCA advocates serve as grievance coordinators for resident grievances, per OAC 340:2-3-51.

(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.

(2) Suspected incidents of abuse, neglect, verbal abuse, exploitation, and caretaker misconduct are immediately transmitted to OCA intake, per OAC 340:2-3-33.

(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, 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; ■ 1
- (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; ■ 2
- (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 ■ 3
- (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: ■ 3
 - (A) participating in discharge planning meetings;
 - (B) visiting the identified home prior to the move and ensuring Form 06CB034E, Residential Pre-service Checklist, 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.

INSTRUCTIONS TO STAFF 340:2-3-72

Revised ~~9-17-189-15-21~~

- 1. Office of Client Advocacy (OCA) advocates document all advocacy and monitoring activities in OCA's Client Contact Manager database.**

2. **OCA advocate attendance at meetings involving the implementation of a level 3 or 4 behavior intervention strategy is encouraged.**
3. **The nature and scope of advocacy, on behalf of residents for transitioning from the Robert M. Greer Center or Laura Dester Children's Center (SHIELD) to a community residential placement is determined on a case-by-case basis.**

340:2-3-73. 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

Revised ~~9-17-18~~9-15-21

(a) **Representation.** OCA provides ombudsman and advocacy services to former HCMs and NORCE and SORC residents of the facilities, per Oklahoma Administrative Code (OAC) 340:2-3-71. 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. ■ 1 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. ■ 2

(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), OCA advocacy and monitoring activities on behalf of each client, include:

(1) verifying that Form 06CB034E, Residential Pre-Service Checklist, 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; ■ 3

(4) completing a meaningful contact regarding each client served, at least monthly; ■ 4

(5) completing a service review at least once every six months; ■ 5

(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: ■ 6

(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, 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 114 120 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; ■ 7 through 9

(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. ■ 11

(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. ■ 8

(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), 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.

INSTRUCTIONS TO STAFF 340:2-3-73

Revised ~~9-17-189-01-21~~

- 1. Office of Client Advocacy (OCA) advocate caseloads. Each OCA advocate is assigned no more than 50 clients, including Hissom class members (HCM)s, former residents of the Northern Oklahoma Resource Center of Enid (NORCE) and the Southern Oklahoma Resource Center (SORC), and other Developmental Disabilities Services (DDS) clients living in community residential settings.**
- 2. Changes in the assigned OCA advocate. All requests by a client or the client's representative for a change in assigned OCA advocate are considered and addressed. Requests for an OCA advocate of a particular gender or other characteristic are considered in a manner that complies with all federal and state laws prohibiting discrimination on the basis of race, color, national origin, sex, age, religion, or disability.**
- 3. Client contacts. Face-to-face visits are made with each client at least once every three months. A minimum of two visits each year must occur in the client's home.**
- 4. In addition to the DDS Client Contact Manager (CCM) review, the OCA advocate is required to complete and document at least one meaningful contact every month. These contacts may be any type of informative contact with, or regarding a client served. This contact may be a phone conversation, email, visit, or a meeting with the client, family, guardian, provider, case manager, or team member. There must be at least one documented contact each month in addition to the DDS CCM review for each client caseload. Clients who are incarcerated or refuse services are the only exceptions to this Instruction.**
- 5. Service reviews. An OCA advocate completes a service review every six months for each client. Sources of information for completing the service review include a home visit, the home record, observations, incident reports, verbal accounts by clients and persons involved in their lives, and other documentation made since the last service review. A completed service review is entered on the OCA Client Contact Manager database within five-business days of the home visit.**

- 6. The OCA advocate reviews the DDS CCM database for each client on his or her caseload at least monthly and documents the review in the OCA CCM database. A review consists of opening and reading the content of the contact note, document, or incident report. The OCA advocate's documented review must state the time period and the number of CCM contact notes, documents, and incident reports present and reviewed. OCA advocates must state if any new information was obtained from the review and detail any identified issues requiring follow-up in the documented review. OCA advocates pay close attention to health and safety concerns and initiate informal problem resolutions, when appropriate.**
- 7. The OCA advocate becomes familiar with and observes the rules and regulations in effect at the facility where the client is in custody, specifically those regarding what items are permissible to give to or receive from inmates in that facility. The OCA advocate does not provide anything facility rules prohibit.**
- 8. This may include contacting the client's assigned-prison case manager, to ensure the facility is aware of the client's abilities and limitations relevant to the individual's classification, safety, and participation in vocational and other programs.**
- 9. The OCA advocate provides information to the client's attorney and other officials including parole officers relevant to the client's conviction, sentence, appeal, prison classification, assignments, living, work, and education within the prison. This includes general information regarding the client's particular developmental disabilities, such as the potential for impaired understanding of consequences, vulnerability to exploitation, and learning challenges. The OCA advocate obtains the client's and/or guardian's written consent before releasing confidential information about the client.**
- 10. When services are refused, the client and the client's legal representation are advised of any risks accompanying the decision to refuse services and are informed of the fair hearing process, per Oklahoma Administrative Code (OAC) 340:100-3-11. OAC 340:100-3-11 requires the Personal Support Team to engage in and document consideration and attempts to initiate alternatives, to resolving the concerns expressed by the client, legal representative, or both. Appropriate legal resolutions are sought when it is determined the exercise of the right to refuse services by a client, who has not been determined incapacitated to act on his or her own behalf presents a risk to the individual, per Oklahoma Statutes.**
- 11. Persons who are in Oklahoma Department of Corrections custody are deemed not to be Waiver recipients. Therefore assessments, such as the capacity assessment are not required; however, it is appropriate for the OCA advocate to request assessments be completed as part of the transition process when the client is close to discharge from custody.**