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Overview

Immigrant children in the custody of the Office of Refugee Resettlement (ORR) are entitled to be **treated with dignity and respect and held in the least restrictive setting** that is in their best interests while they wait to be released from ORR custody. ORR must provide children with basic services such as medical and mental health care and education as well as access to recreation, religious services, and contact with family members. Care providers must follow applicable state laws and regulations and are forbidden from using disciplinary practices that harm children's well-being.

Unaccompanied children in ORR custody have legal rights under the following:

Statutes

- Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232

Regulations

- 45 C.F.R. § 410.1000, *et seq.* (ORR Foundational Rule)

Court Orders

- *Flores Settlement Agreement* ("*Flores Settlement*") (partially terminated as to HHS but still in effect as to children in restrictive and out-of-network placements)

This guide is designed to explain what rights your clients have and what sources of law undergird these rights. This guide does not, and is not intended to, constitute legal advice in a particular case. Examples used throughout the guide are intended to illustrate possible fact scenarios for unaccompanied children.

Overview

What You Can Do

If you have concerns regarding violations of your client's rights in ORR custody, you can:

- **Reach out to the National Center for Youth Law** – We can help identify potential legal violations and suggest options for relief. Please contact NCYL at immigration@youthlaw.org.
- **Contact the program director and Federal Field Supervisor responsible for your client's facility** – Identify what concerning practices are occurring, citing relevant laws, regulations, and policy provisions, and make specific requests for your client.
- **File a complaint with the UC Office of the Ombuds** – The ORR Foundational Rule creates a UC Office of the Ombuds with the authority to receive and investigate complaints regarding ORR's adherence to federal law and ORR regulations and standards. See [45 C.F.R. § 410.2002](#). Complaints can be submitted through the UC Office of the Ombuds [website](#) or by email at UC.Ombuds@acf.hhs.gov.
- **In California, file a complaint with the CA Foster Care Ombudsperson** – The Ombudsperson has authority to receive and investigate complaints on behalf of children and youth in licensed ORR placements in California. [Cal. Welf. & Inst. Code § 16164\(a\)\(2\), \(3\)](#). Complaints can be submitted through the Ombudsperson's [website](#). For assistance filing a complaint, contact NCYL.

State Licensing and Child Welfare Laws

Are ORR facilities required to follow state licensing standards?

- All non-emergency ORR placements—including standard, secure, and out-of-network (OON) facilities—must follow applicable state licensing requirements. [45 C.F.R. §§ 410.1001, 410.1302\(a\)](#).
- Standard and secure programs are further required to follow all applicable state child welfare laws and regulations, as well as state fire, health, and safety codes. [45 C.F.R. § 410.1302\(b\)](#). This typically means that ORR shelters are **required to follow the same rules that group homes holding youth in the state foster system must follow**.
- Emergency and influx facilities are not required to meet state licensing standards and instead must follow standards set by ORR regulations. [45 C.F.R. §§ 410.1001, 410.1801](#).

What state rules and regulations apply to ORR foster care, group home, and shelter placements (“standard programs”)?

- A “standard program” is the term used in the ORR Foundational Rule to refer to shelters, group homes, and foster care placements. [45 C.F.R. § 410.1001](#). Standard programs must “be **non-secure** as required under State law.” *Id.*
- As of February 2025, three states—Texas, Florida, and South Carolina—refuse to license ORR facilities. See [Investigations of Child Abuse and Neglect Rule, 89 Fed. Reg. 93498, 93501 \(Nov. 27, 2024\) \(codified at 45 C.F.R. Part 412\)](#).
- If a child is placed in a standard program in a state that **continues to license** ORR facilities, the program must have a state license to care for dependent (as opposed to delinquent) children and must follow all state child welfare laws and regulations. [45 C.F.R. §§ 410.1001, 410.1302\(a\), \(b\)](#).
- If a child is placed in a standard program in a State that **refuses to license** ORR programs (e.g., Texas, Florida, or South Carolina), the standard program is not required to have a state license but must nevertheless follow state licensing requirements for facilities caring for dependent children and all other state child welfare laws and regulations. [45 C.F.R. §§ 410.1001, 410.1302\(a\), \(b\)](#).

State Licensing and Child Welfare Laws

What state rules and regulations apply to restrictive placements?

- If a child is placed in a heightened supervision or secure program in a state that **continues to license** ORR facilities, the program must be “licensed by an appropriate State agency” and follow applicable state child welfare laws and regulations. [45 C.F.R. §§ 410.1001, 410.1302\(a\)](#). Unlike standard programs, this license does not have to be specifically for the care of dependent children. *Id.* [§§ 410.1001, 410.1302\(a\)](#).
- If a child is placed in a heightened supervision or secure program in a state that **refuses to license** ORR programs, the restrictive placement is not required to have a state license but must nevertheless meet relevant state licensing requirements and all other state child welfare laws and regulations. [45 C.F.R. §§ 410.1001, 410.1302\(a\)](#).

Maria

Maria is in ORR custody at a shelter in Texas. Her shelter does not have a state license and is housed in a facility formerly used by Texas to place children adjudicated delinquent. Although the shelter is not required to have a state license, it must be non-secure and follow all the licensing rules applicable to Texas child welfare programs. If the facility instead follows rules and security measures applicable to juvenile justice programs, Maria’s advocates could argue that the shelter is not in fact a standard program and that Maria is inappropriately placed in a restrictive facility.

What state rules and regulations apply to out-of-network placements?

- If a child is placed in an out-of-network facility (OON), the facility **must be licensed** by an appropriate state agency. [45 C.F.R. § 410.1001](#). All OON placements must be licensed, regardless of whether the state licenses ORR facilities.
- The *Flores* Settlement Agreement continues to apply in full to any OON placement. See *Flores v. Garland*, No. CV 85-4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024).

State Licensing and Child Welfare Laws

- The type of license required depends on the type of OON placement. If the child is placed in a non-restrictive OON placement (e.g. foster care, group home, or shelter placement), the placement must be licensed for dependent children. [FSA ¶ 6](#). Restrictive OON placements should follow the licensing requirements and standards of the equivalent in-network placement type.

Which entities enforce legal standards for children in ORR programs?

- ORR is required to monitor all care provider facilities for compliance with its regulations and to protect against abuse and neglect. See [45 C.F.R. § 410.1303\(a\)](#); see also [45 C.F.R. § 412.100](#) (Investigations of Child Abuse and Neglect Interim Final Rule).
- In **states that continue to license** ORR facilities, state licensing authorities have jurisdiction to enforce their licensing requirements, except in emergency or influx facilities.
 - For example, in California, the Community Care Licensing Division of the Department of Social Services monitors and enforces licensing standards in ORR facilities. In Arizona, the Office of Licensing and Regulation within the Department of Child Safety has that authority.
- In **states that refuse to license** ORR facilities, and in **emergency or influx facilities** anywhere in the country, ORR must “conduct enhanced monitoring, including on-site visits and desk monitoring.” [45 C.F.R. § 410.1303\(e\)](#).
- Additionally, the rights of children in any **secure, heightened supervision, and out-of-network placement** are enforceable through the *Flores* Settlement Agreement. See [Flores v. Garland, 2024 WL 3467715, at *9](#).

Physical Care, Health, and Hygiene

What are the requirements for the physical care of each child?

- Unaccompanied children are entitled to “**proper physical care and maintenance**,” while in ORR custody. [45 C.F.R. § 410.1302\(c\)\(1\)](#). This includes access to “food that is of adequate variety, quality, and in sufficient quantity,” “drinking water,” and “appropriate clothing [and] personal grooming and hygiene items.” *Id.*
- Care provider facilities must have “**suitable living accommodations**” and maintain “safe and sanitary conditions that are consistent with ORR’s concern for the particular vulnerability of children.” [45 C.F.R. § 410.1302\(c\)\(1\)](#).

What health care services does ORR have to provide?

- Each unaccompanied child must receive “[a] **complete medical examination** (including screening for infectious diseases) within 2 business days of admission.” [45 C.F.R. § 410.1307\(b\)\(2\)](#). Care providers must also provide “[a]n annual physical examination, including hearing and vision screening, and follow-up care for acute and chronic conditions.” *Id.* [§ 410.1307\(b\)\(4\)](#).
- ORR must ensure that each child has access to “**routine medical and dental care**”; “emergency healthcare services”; and family planning services and abortion care. [45 C.F.R. § 410.1307\(a\)](#); *id.* [§ 410.1001](#) (defining “[m]edical services requiring heightened ORR involvement”). For more information on a child’s right to access reproductive health care, see [Guide to Sexual and Reproductive Health Rights in ORR Custody](#).
- Care providers must also provide immunizations, administration of prescribed medication and special diets, and appropriate mental health interventions. *Id.* [§ 410.1307\(b\)](#).
- If certain medical care is not available near the child’s placement, and that care is medically necessary or was reasonably requested by the child, **ORR is obligated to transfer the child to a placement that can support the child’s health care needs**. [45 C.F.R. § 410.1307\(c\)\(1\)](#).

Individual Services

What screenings and assessments do children receive upon admission?

- In addition to the health assessments discussed above, within 24 hours of arriving in ORR custody, a trained staff member will complete **the Initial Intakes Assessment** with a child. Policy Guide § 3.2.1. The assessment must cover the child’s “biographic, family, migration, health history, substance use, and mental health history.” 45 C.F.R. § 410.1302(c)(8)(ii).
 - Children must be screened to identify whether they are potential victims of trafficking. Policy Guide § 3.3.3; see also 45 C.F.R. § 410.1302(c)(8)(ii).
- Within 72 hours, care providers must also complete **a risk assessment** to identify children who have experienced past sexual abuse or are at heightened risk of sexual abuse and to determine how to ensure each child’s safety while they are in custody. 45 C.F.R. § 411.41(a); Policy Guide § 4.8. This assessment must be conducted by trained staff and care providers must take appropriate steps to prevent further dissemination of sensitive information. 45 C.F.R. § 411.41(c), (d).

Andrés

During intake at his ORR placement, Andrés told shelter staff that he is gay. As part of the risk assessment, an appropriately trained and qualified staff member must ask Andrés whether he feels safe disclosing his sexual orientation to others. The staff member must ask if there’s anything the care provider can do to help him feel safe and inform him about how to report bullying or harassment. If, during the risk assessment, Andrés discloses sexual abuse that happened prior to arriving in ORR custody, the care provider must refer his case to a clinician to determine whether a medical and/or mental health follow-up is necessary.

Individual Services

What is the individualized needs assessment?

- Care providers must complete an individualized needs assessment for each child in custody. [45 C.F.R. § 410.1302\(c\)\(2\)](#). This involves gathering information about the child, such as:
 - the child’s personal history;
 - any issues requiring immediate attention;
 - their educational level;
 - their language needs and religious practice;
 - the child’s goals, strengths, and weaknesses; and
 - individuals who may be able to assist with family unification. *Id.*
- This assessment informs a child’s individual service plan. [45 C.F.R. § 410.1302\(e\)](#).

What is an individual service plan?

- Care providers must develop an individual service plan for each child that is developed with input from the child and implemented through case management services. [45 C.F.R. § 410.1302\(e\)](#). “Service plans should identify **individualized, person-centered goals** with measurable outcomes and with steps or tasks to achieve the goals” and should be “developed with input from the unaccompanied child.” *Id.*; see also [Policy Guide § 3.3](#).
- The case manager must review and update the plan at regular intervals. [45 C.F.R. § 410.1302\(e\)](#).
- If a child has an **identified disability**, ORR must assess the child’s need for reasonable accommodations, modifications, services, and/or supports and, if needed, develop and implement an individualized Section 504 Service Plan for the child. See [Policy Guide § 3.8.3](#); see also [Guide to Rights of Children with Disabilities in ORR Custody](#).

Individual Services

Are children entitled to services to facilitate their release from custody?

- Yes. Children in ORR custody are entitled to release to a suitable sponsor “without unnecessary delay.” [45 C.F.R. § 410.1201\(a\)](#). As such, ORR and/or the care provider are required to “make and record the **prompt and continuous efforts on its part towards family reunification** and release of the unaccompanied child.” *Id.* [§ 410.1203\(a\)](#). This includes the provision of ongoing case management and family unification services. *Id.*; see also *id.* [§ 410.1302\(c\)\(11\)](#).
- Case managers must provide **weekly status updates to each child** regarding the child’s case, preferably in-person. [Policy Guide § 2.3.2](#).
- For more information, see [Guide to Rights of Children in ORR Custody to Prompt Release](#).

What counseling services do children receive in ORR custody?

- Children must receive at least **one individual counseling session and two group counseling sessions per week**. [45 C.F.R. § 410.1302\(c\)\(5\), \(6\)](#).
- Individual counseling sessions must be conducted “by certified counseling staff with the specific objectives of reviewing the unaccompanied child’s progress, establishing new short and long-term objectives, and addressing both the developmental and crisis-related needs of each unaccompanied child.” [45 C.F.R. § 410.1302\(c\)\(5\)](#).

Individual Services

What rights do children in ORR custody have to practice their religion?

- Federal regulations require care providers to provide, “[w]henever possible, **access to religious services of the unaccompanied child's choice.**” [45 C.F.R. § 410.1302\(c\)\(9\)](#).
- ORR policy directs care providers to ensure children have opportunities “to observe and practice their spiritual or religious beliefs.” [Policy Guide § 3.3.7](#).
 - Care providers must provide children access to members of their religious community and respect children’s reasonable requests to attend in-person places of religious worship. [Policy Guide § 3.3.7](#).
 - Care providers must also allow children to celebrate religious holidays, follow certain hygiene routines, wear religious articles of clothing, and follow certain food preparation and dietary restrictions. [Policy Guide §§ 3.3.7, 3.3.11](#); see also [45 C.F.R. § 410.1302\(c\)\(9\)](#).
- If a child reasonably requests religious or cultural information or items, the care provider facility must provide the requested items, and provide them in the child’s preferred language. [45 C.F.R. § 410.1306\(e\)](#); see also [Policy Guide § 3.3.7](#).
- Care providers may never deny a child religious observation and services as a disciplinary sanction. [45 C.F.R. § 410.1304\(a\)\(2\)\(ii\)](#).

Malik

Upon arriving in ORR custody, Malik told shelter staff that he is Muslim and requested to attend Friday prayer service at a mosque. Catholic children at the shelter are transported to a local church on Sundays. The shelter offered to provide Malik a virtual service on Fridays because he is the only Muslim youth currently at the shelter, and it would require more staff to transport him to a mosque for in-person services.

The care provider’s action is inappropriate. Malik’s request to go to the mosque once a week is reasonable, and without a specific concern about the safety of Malik or the staff, the care provider should ensure he can attend in-person religious services.

Individual Services

Are children entitled to access legal services?

- The Trafficking Victims Protection Reauthorization Act requires the Department of Health and Human Services (HHS) to “ensure, to the greatest extent practicable,” that unaccompanied children have access to counsel to represent them in legal proceedings or matters. [8 U.S.C. § 1232\(c\)\(5\)](#).
- Within 10 business days of arriving at an ORR facility, **a child must receive a presentation by an independent legal service provider** regarding the immigration system and their legal rights, **as well as a confidential legal consultation**. [45 C.F.R. § 410.1309\(a\)\(2\)\(v\)](#).
- Care providers must provide children information about “the availability of free legal assistance,” the right to an immigration court hearing, the ability to apply for asylum, and the ability to request voluntary departure in lieu of removal. [45 C.F.R. § 410.1302\(c\)\(12\)](#). Care providers must make interpretation and translation services available to a child’s legal service provider upon request. [45 C.F.R. § 410.1306\(h\)](#).
- For more information about access to legal services, see [45 C.F.R. § 410.1309](#).

Under what circumstances is a child in ORR custody appointed a child advocate?

- The Trafficking Victims Protection Reauthorization Act authorizes HHS “to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied [] children.” [8 U.S.C. § 1232\(c\)\(6\)\(A\)](#). “Child advocates are third parties who make independent recommendations regarding the best interests of an unaccompanied child.” [45 C.F.R. § 410.1308\(b\)](#).
- ORR is not required to appoint child advocates for unaccompanied children, but it is required to make an appointment decision within 5 business days of receiving a referral, absent exceptional circumstances. [45 C.F.R. § 410.1308\(d\)\(2\)](#).
- **The Young Center for Immigrant Children’s Rights** accepts referrals for the appointment of a child advocate at theyoungcenter.org/refer-a-child.

Education and Recreation

What educational services are unaccompanied children entitled to receive?

- Unaccompanied children must **receive educational services in a structured classroom setting, Monday through Friday**, for a minimum of six hours a day. [45 C.F.R. § 410.1302\(c\)\(3\)](#); [Policy Guide § 3.3.5](#).
- Care providers must provide English Language Training (ELT) and “[i]nstruction in basic academic areas that may include science, social studies, math, reading, writing, and physical education.” [45 C.F.R. § 410.1302\(c\)\(3\)](#).

Are educational services tailored to each child’s needs?

- Educational services must be appropriate to the child’s academic development, literacy level, linguistic ability, communication skills, and disability (if applicable). [45 C.F.R. § 410.1302\(c\)\(3\)](#); [Policy Guide § 3.3.5](#).
- A child’s individualized needs assessment must include “[a]n educational assessment and plan.” [45 C.F.R. § 410.1302\(c\)\(2\)\(iv\)](#).
- A **child with a disability is entitled to reasonable modifications** to enable them to access educational services and these should be documented in the child’s Section 504 Service Plan. See [45 C.F.R. §§ 410.1311\(c\), \(d\)](#); [Policy Guide § 3.8.3](#); see also [Guide to Rights of Children with Disabilities in ORR Custody](#).
- Additionally, “[a]s needed, unaccompanied children must be provided an opportunity for **learning advancement**, such as independent study, special projects, pre-GED classes, and college preparatory materials.” [Policy Guide § 3.3.5](#).
- For more information about educational services in ORR custody, see NCYL’s toolkit on [Educational Advocacy for Unaccompanied Immigrant Youth in California](#).

Education and Recreation

Marisol

Marisol, who is 16, has been in an ORR shelter for five months awaiting placement in the Unaccompanied Refugee Minors program. Because she's been at the shelter for so long, the educational material has become repetitive. In this scenario, shelter staff should ensure that Marisol continues to receive educational opportunities appropriate to her academic level. For example, the care provider could offer virtual education on subjects Marisol is interested in, or GED/college preparatory classes that Marisol can take in addition to or instead of the other parts of the shelter's curriculum.

How much recreation time should children receive each day?

- Children must have **daily outdoor activity** (weather permitting), at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (not including television). [45 C.F.R. § 410.1302\(c\)\(4\)](#). Activities must take place for at least three hours a day when school is not in session. [Id. § 410.1302\(c\)\(4\)](#).
- If the care provider does not have sufficient space on their campus for recreation, they must take children to parks or other locations in the community. [Policy Guide § 3.3.8](#).

Language Access

Are children in ORR custody entitled to access interpreters and translators?

- Yes. “To the greatest extent practicable, care providers shall consistently offer” a child the option of **interpretation and translation services in the child’s native or preferred language**, and in a way the child effectively understands. [45 C.F.R. § 410.1306\(a\)\(1\)](#).
- ORR requires care providers to make reasonable efforts to provide a child with an **in-person interpreter**—particularly for rare or indigenous language speakers—before resorting to remote interpretation services. [45 C.F.R. § 410.1306\(a\)\(2\)](#).

Does a child’s language affect ORR’s placement decision?

- A child’s language access needs are one factor ORR considers in determining the child’s placement. [45 C.F.R. § 410.1103\(b\)\(14\)](#); *id.* [§ 410.1306\(b\)](#). As appropriate and practicable, ORR is supposed to place unaccompanied children with similar language needs in the same care provider facility. *Id.* [§ 410.1306\(b\)](#).

What materials must be provided to a child in their native or preferred language?

- “[A]ll documents and materials shared with the unaccompanied children including those posted in the facilities,” must be translated for each child in a timely manner. [45 C.F.R. § 410.1306\(a\)\(3\)](#). For example, the intake orientation must be conducted in the child’s preferred language and the child must receive information about reporting grievances in their preferred language. *Id.* [§ 410.1306\(c\)\(3\), \(6\), \(7\)](#); see also *id.* [§ 410.1302\(c\)\(8\)\(iii\)](#).
- Children must also receive leisure reading materials in an accessible language. [45 C.F.R. §§ 410.1306\(d\)\(2\), 410.1302\(c\)\(3\)\(iii\)](#).

Language Access

What if my client does not read in any language?

- Care providers must offer interpretation and translation services **in a way a child can effectively understand**. 45 C.F.R. § 410.1306(a)(1). If a child does not read in their native or preferred language, the care provider must have an interpreter orally explain any required documents to the child and confirm that the child fully understands the material. *Id.* § 410.1306(c)(5).

What language services should be available during the school day?

- Care providers must provide “educational instruction and relevant materials in a format and language accessible to all unaccompanied children, regardless of the child’s native or preferred language.” 45 C.F.R. § 410.1306(d)(1). This includes providing in-person interpretation during school hours when possible and translations of written educational materials. *Id.* § 410.1306(d)(2).
- Care providers are permitted to separate children into class groups based on language (as well as academic development and level of literacy), rather than by chronological age. Policy Guide § 3.3.5.

Juana

Juana speaks Q’eqchi’, an indigenous Mayan language. She has learned some Spanish but feels most comfortable speaking Q’eqchi’. Most youth at Juana’s shelter speak Spanish, so classes are held in Spanish. The care provider must prioritize providing a qualified in-person interpreter for Juana, who could sit with her and provide interpretation during classes. If the care provider cannot secure an in-person interpreter, it must consult with ORR about how to ensure Juana can meaningfully access educational services while she is in custody.

Language Access

What language services should be available during a child's medical appointments?

- Care providers must “ensure that unaccompanied children are able to communicate with physicians, clinicians, and healthcare staff in their native or preferred language.” [45 C.F.R. § 410.1306\(g\)](#). Care providers must prioritize securing in-person interpretation services before using remote interpretation. *Id.*

Does ORR have to provide interpretation or translation services when corresponding with an unaccompanied child's parent or sponsor?

- **Yes.** Care providers are required to use qualified interpretation or translation services with a child's parent, guardian, and/or potential sponsor. [45 C.F.R. § 410.1306\(f\)](#). If the care provider sends written materials to the parent, guardian, or potential sponsor, they must provide translations in the individual's native or preferred language. *Id.*

Phone Calls and Family Contact

What are a child's rights to have contact with their family and friends while they are in custody?

- Each child in ORR custody is entitled to contact their family members. [45 C.F.R. § 410.1302\(c\)\(10\)](#).
- ORR requires care providers to create a list of approved and prohibited persons that a child may contact. [Policy Guide § 3.3.10](#). The care provider can only prohibit contact if there is a documented valid reason for concern about the child's contact with that person. *Id.*

What types of communication are children entitled to?

- Phone and video calls, at no cost to the child or the child's family member. [45 C.F.R. § 410.1302\(c\)\(10\)](#); [Policy Guide § 3.3.10](#).
- Sending and receiving mail and emails. [Policy Guide § 3.3.10](#).
- Visitation. [45 C.F.R. § 410.1302\(c\)\(10\)](#); [Policy Guide § 3.3.10](#).

Oumar

Since arriving in ORR custody, Oumar has been trying to unify with his cousin who offered to sponsor him. ORR denied his cousin's sponsorship application because he doesn't have permanent living accommodations for Oumar. After the sponsorship application was denied, staff prohibited Oumar from calling his cousin.

The care provider must reinstate Oumar's phone calls with his cousin. Without a documented safety concern about Oumar contacting him, the fact that his cousin is no longer his potential sponsor is not a valid reason to prohibit communication between them.

Phone Calls and Family Contact

How much time for phone calls are children entitled to?

- Federal regulations require **at least three 15-minute phone or video calls per week.** [45 C.F.R. § 410.1302\(c\)\(10\).](#)
- As of February 2025, ORR policy provides for more phone contact than the minimum required by federal regulations. On weekdays, each child must have at least 10-minute daily phone calls or a minimum of 50-minutes of phone time allocated over Monday through Friday. [Policy Guide § 3.3.10.](#) On weekends, holidays, and the child’s birthday, each child must have the opportunity for daily 45-minute calls. [Policy Guide § 3.3.10.](#)
- Care providers must permit a child to have more time for phone calls in situations such as family emergencies. [Policy Guide § 3.3.10.](#)

Do children have a right to privacy when communicating with family members?

- When a child communicates with approved contacts, care providers must respect the child’s **“reasonable right to privacy”** which includes being able to “talk privately on the phone.” [45 C.F.R. § 410.1302\(c\)\(14\).](#) A child must be able to make phone calls in a private space that ensures confidentiality. *Id.* [§ 410.1302\(c\)\(10\).](#)
 - ORR policy permits supervised phone calls under specific circumstances documented in the child’s safety plan, such as if a child is a victim of trafficking. [Policy Guide § 3.3.3.](#)
- During in-person visits, care provider staff must respect the child’s privacy but may take reasonable steps to prevent the unauthorized release of the child. [45 C.F.R. § 410.1302\(c\)\(10\); Policy Guide § 3.3.10.](#)

Behavior Management and Discipline

What are ORR’s general rules regarding behavior management?

- Care providers must develop behavior management policies that are “trauma-informed” and “take into consideration the range of ages and maturity in the program and that are culturally sensitive.” [45 C.F.R. § 410.1304\(a\)](#); see also [Policy Guide § 3.3.13](#).
- Care providers **may not use discipline against a child that “[a]dversely affect[s] [their] health, or physical, emotional, or psychological well-being.”** For examples of prohibited conduct, such as corporal punishment and forced physical movement, see [45 C.F.R. § 410.1304\(a\)\(1\), \(2\)](#).

Can staff threaten my client with a Significant Incident Report or negative immigration consequences as a form of discipline?

- **No.** Federal regulations prohibit care providers from using incident reporting or the threat of incident reporting as a method of discipline or managing children’s behavior. [45 C.F.R. §§ 410.1303\(g\)\(2\), \(3\), 410.1304\(a\)\(1\)](#).
- Care providers are also forbidden from disciplining a child by threatening negative consequences for unification with their sponsor or their immigration case. [45 C.F.R. § 410.1304\(a\)\(1\)](#).

Will the existence of a Significant Incident Report hurt my client’s placement options or immigration relief?

- “[T]he existence of a report itself is not sufficient for a step-up, a refusal to step-down, or a care provider facility to refuse a placement.” [45 C.F.R. § 410.1303\(g\)\(4\)](#). Care providers may, however, cite to the content of a significant incident report as an example of concerning behavior. *Id.*
- As of February 2025, ORR prohibits sharing medical, mental health records, and behavioral reports with the Department of Homeland Security (DHS) or the Executive Office for Immigration Review for purposes of immigration proceedings or enforcement. See [Policy Guide § 5.10.2](#); [Notice of a Modified System of Records, 89 Fed. Reg. 100500, 100505](#).

Behavior Management and Discipline

- For a child with a disability, ORR is prohibited by court settlement from sharing clinical or mental health records or Significant Incident Reports with any component of DHS for purposes of immigration enforcement. See [Lucas R. Disability Settlement §§ II.A.2.g, II.C.3](#). The term disability is broadly construed and includes children with mental health conditions such as post-traumatic stress disorder. See [Guide to Rights of Children with Disabilities in ORR Custody](#). If you have reason to believe that ORR has violated this prohibition, please contact the National Center for Youth Law at immigration@youthlaw.org.

Jennifer

Jennifer shares a room at her ORR shelter with another unaccompanied child, Zara. Jennifer and Zara got into a heated verbal disagreement after Zara accused Jennifer of using her things without permission. A staff member told both girls to calm down and told them that if they continued to fight, the staff member would file a Significant Incident Report and this report would have negative consequences for their legal cases and their release.

The staff member's actions in this situation are unlawful. The staff member can create a Significant Incident Report if the incident meets reporting criteria but cannot use the threat of a report to attempt to control the girls' behavior. If a report is created, the staff member should not suggest that this report will negatively affect the girls' cases and ORR should not share the report with immigration authorities for enforcement purposes.

Can staff take away a child's phone calls to their family or attorney to punish misbehavior?

- **No.** Care providers are forbidden from disciplining an individual child by denying "meals, hydration, sufficient sleep, routine personal grooming activities, exercise (including daily outdoor activity), medical care, correspondence or communication privileges, religious observation and services, or legal assistance." [45 C.F.R. § 410.1304\(a\)\(2\)\(ii\)](#).

Behavior Management and Discipline

Can shelter staff discipline a child by secluding the child in a room?

- Seclusion is defined as “the involuntary confinement of a child alone in a room or area from which the child is instructed not to leave or is physically prevented from leaving.” [45 C.F.R. § 410.1001](#).
- In standard programs (such as shelters) and residential treatment centers (RTCs), staff are prohibited from using seclusion to discipline a child. [45 C.F.R. § 410.1304\(c\)](#).
- Seclusion is permitted **in secure facilities only “in emergency safety situations”** for the short time-limited purpose of mitigating serious danger to others. [45 C.F.R. § 410.1304\(e\)\(1\)](#).

What are the rules regarding the use of force or other restraints?

- In standard programs (such as shelters) and residential treatment centers (RTCs), federal regulations **prohibit personal restraints** (i.e., the use of physical force to restrain a child’s movement), **except in “emergency safety situations.”** [45 C.F.R. §§ 410.1001, 410.1304\(c\), \(d\)](#).
- ORR has different rules on the use of restraints in secure facilities, which can be found at [45 C.F.R. § 410.1304\(e\)](#). Restraints are still generally prohibited except to protect the immediate safety of the child or others, or where the child poses a serious risk of running away while in transit or outside of the facility. See *id.* [§ 410.1304\(e\), \(f\)](#); see also [Policy Guide § 3.3.17](#).
- All care providers are prohibited from using “prone physical restraints, chemical restraints, or peer restraints” for any reason. [45 C.F.R. § 410.1304\(a\)\(3\)](#).