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Mr. Kenneth Jennings
Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814

May 12, 2010

Re: Comment to Proposed Regulations Adding "Reasonable and Prudent Parent Standard" in Group Homes and Foster Parent Training Regulations
ORD #0709-07

Dear Mr. Jennings:

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

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

Lack of Appropriate Balance

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

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

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

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

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

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

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

Inappropriate Barriers

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

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

ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities.”

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

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

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

The Children’s Advocacy Institute appreciates the opportunity to comment on the proposed changes to these regulations. Please feel free to contact me with questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christina Riehl', written in a cursive style.

Christina McClurg Riehl
Senior Staff Attorney