

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 477 Session of 2015

INTRODUCED BY HICKERNELL, TOOHL, BISHOP, COHEN, DUSH, FEE, HARHART, HEFFLEY, MENTZER, MILLARD, MURT, PICKETT, ROEBUCK, ROZZI, YOUNGBLOOD AND ZIMMERMAN, FEBRUARY 17, 2015

AS REPORTED FROM COMMITTEE ON CHILDREN AND YOUTH, HOUSE OF REPRESENTATIVES, AS AMENDED, JULY 21, 2015

AN ACT

1 Providing for activities and experiences for children in out-of-  
2 home placements.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Activities  
7 and Experiences for Children in Out-of-Home Placements Act.

8 Section 2. Legislative intent.

9 The General Assembly finds and declares as follows:

10 (1) Parents and guardians make important decisions every  
11 day regarding the participation of their children in  
12 activities. Caregivers of children in out-of-home placements  
13 are faced with making the same decisions for children in  
14 their care.

15 (2) When a caregiver of a child in an out-of-home  
16 placement makes a decision regarding the child's  
17 participation in an activity, the caregiver must consider

1 applicable laws and policies designed to safeguard the  
2 child's health and safety. However, these laws and policies  
3 are sometimes interpreted to prohibit a child from  
4 participating in age-appropriate and developmentally  
5 appropriate extracurricular and community activities that are  
6 important to healthy child and adolescent development.

7 (3) Participation in activities in school and the  
8 community is important to a child's well-being, both  
9 emotionally and in terms of developing valuable life skills  
10 and building healthy supportive relationships with peers and  
11 caring adults. Providing children with age-appropriate and  
12 developmentally appropriate opportunities to experience  
13 freedom and responsibility are central to making a successful  
14 transition to adulthood.

15 (4) It is the intent of the General Assembly to  
16 recognize the importance of normalizing the lives of children  
17 in out-of-home placements and to empower their caregivers to  
18 approve or disapprove a child's participation in activities  
19 without prior approval of the department, the child's  
20 caseworker or the court.

### 21 Section 3. Definitions.

22 The following words and phrases when used in this act shall  
23 have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Age-appropriate ~~and~~ OR developmentally appropriate." The <--  
26 following:

27 (1) activities or items that are generally accepted as  
28 suitable for children of the same chronological age or level  
29 of maturity or that are determined to be developmentally  
30 appropriate for a child, based on the development of

1 cognitive, emotional, physical and behavioral capacities that  
2 are typical for an age or age group; ~~or~~ AND <--

3 (2) in the case of a specific child, activities or items  
4 that are suitable for the child based on the developmental  
5 stages attained by the child with respect to the cognitive,  
6 emotional, physical and behavioral capacities of the child.

7 "Caregiver." A person with whom the child is placed in an  
8 out-of-home placement, including a resource family or an  
9 individual designated by a facility licensed under 55 Pa. Code  
10 Ch. 3800 (relating to child residential and day treatment  
11 facilities) or any other setting in which a dependent child is  
12 placed by a court under 42 Pa.C.S. § 6351 (relating to  
13 disposition of dependent child).

14 "County agency." The county children and youth social  
15 service agency established in accordance with section 405 of the  
16 act of June 24, 1937 (P.L.2017, No.396), known as the County  
17 Institution District Law, or its successor, and supervised by  
18 the department under Article IX of the act of June 13, 1967  
19 (P.L.31, No.21), known as the Public Welfare Code.

20 "Department." The Department of Human Services of the  
21 Commonwealth.

22 "Out-of-home placement." An out-of-home placement under 42  
23 Pa.C.S. 6351.

24 "Private agency." A children and youth social service agency  
25 subject to the requirements of 55 Pa. Code Ch. 3680 (relating to  
26 administration and operation of a children and youth social  
27 service agency).

28 "Reasonable and prudent parent standard." The standard, <--  
29 characterized by careful and sensible parental decisions that  
30 maintain the health, safety and best interests of a child while

1 encouraging the emotional and developmental growth of the  
2 child, THAT A CAREGIVER MUST USE WHEN DETERMINING WHETHER TO <--  
3 ALLOW A CHILD IN FOSTER CARE UNDER THE RESPONSIBILITY OF THE  
4 COUNTY AGENCY TO PARTICIPATE IN EXTRACURRICULAR, ENRICHMENT,  
5 CULTURAL AND SOCIAL ACTIVITIES.

6 Section 4. Access and standard.

7 (a) Access to activities and experiences.--Subject to  
8 subsection (b), a child in an out-of-home placement is entitled  
9 to engage in, to the greatest extent possible, age-appropriate  
10 and developmentally appropriate activities and experiences. A  
11 child with a disability or special needs in an out-of-home  
12 placement shall have the same access to age-appropriate and  
13 developmentally appropriate activities and experiences as the  
14 child's nondisabled peers, even if reasonable accommodations are  
15 required.

16 (b) Caregiver authority.--Caregivers have the authority to  
17 provide or withhold permission for children in their care to  
18 participate in and experience age-appropriate and  
19 developmentally appropriate activities and experiences in  
20 accordance with this section. The authority of a caregiver:

21 (1) Must be exercised using the reasonable and prudent  
22 parent standard and ~~in accordance~~ DOES NOT CONFLICT with any <--  
23 applicable court order, ~~individual service plan~~ and ~~family~~ <--  
24 service plan.

25 (2) May be exercised without the prior approval of a  
26 county agency or private agency.

27 (c) Reasonable and prudent parent standard.--When using the  
28 reasonable and prudent parent standard, a caregiver must  
29 consider all of the following:

30 (1) The child's age, maturity and developmental level to

1 maintain the overall health and safety of the child.

2 (2) The potential risk factors and the appropriateness  
3 of the extracurricular, enrichment or social activity or  
4 experience.

5 (3) The best interest of the child, based on information  
6 known by the caregiver.

7 (4) The child's wishes.

8 (5) The importance of encouraging the child's emotional  
9 and developmental growth.

10 (6) The importance of supporting the child in developing  
11 skills to successfully transition to adulthood.

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

14 (8) Any special needs or accommodations that the child  
15 may need to safely participate in the activity or experience.

16 (d) Limitation of liability.--A caregiver, COUNTY AGENCY AND <--  
17 PRIVATE AGENCY shall not be liable for harm caused to a child  
18 while engaged in an activity or experience approved by the  
19 caregiver if:

20 (1) the caregiver has used the reasonable and prudent  
21 parent standard in approving the activity or experience; and

22 (2) the approval ~~is in accordance~~ DOES NOT CONFLICT with <--  
23 any applicable court order, ~~individual service plan~~ and <--  
24 ~~family~~ service plan. <--

25 (e) Other liability protection.--This section shall not  
26 remove or limit any existing liability protection afforded by  
27 any other law.

28 Section 5. Obligations of department.

29 The Office of Children, Youth and Families of the department  
30 shall do all of the following:

1           (1) Require, as a condition of licensure for foster  
2 family care agencies and ~~child-care~~ facilities PROVIDING OUT- <--  
3 OF-HOME PLACEMENTS, the development of standards and training  
4 relating to the reasonable and prudent parent standard. The  
5 standards and training shall include, but are not limited to,  
6 the following:

7           (i) knowledge and skills relating to the  
8 developmental stages of the cognitive, emotional,  
9 physical and behavioral capacities of a child; and

10          (ii) knowledge and skills relating to applying the  
11 reasonable and prudent parent standard to:

12           (A) decisions such as whether to allow a child  
13 to engage in extracurricular, enrichment, cultural  
14 and social activities, including sports, field trips  
15 and overnight activities lasting one or more days;  
16 and

17           (B) decisions involving the signing of  
18 permission slips and arranging transportation for the  
19 child to and from extracurricular, enrichment,  
20 cultural and social activities.

21          (2) Verify, at yearly licensure reviews, that county and  
22 private agencies providing out-of-home placement do all of  
23 the following:

24           (i) Promote and protect the ability of a child to  
25 participate in age-appropriate and developmentally  
26 appropriate activities and experiences.

27           (ii) Implement policies consistent with this act.

28          (3) Develop standards and a process by which individuals  
29 employed by ~~child-care~~ facilities PROVIDING OUT-OF-HOME <--  
30 PLACEMENTS are designated to make decisions for children

1 based on the reasonable and prudent parent standard.

2 Section 6. County obligations.

3 A county agency shall do all of the following:

4 (1) Ensure that all out-of-home placement facilities  
5 designate an individual to provide decision-making authority  
6 under the reasonable and prudent parent standard for children  
7 residing in their care. The individual designated should  
8 consult with social workers or treatment staff members who  
9 are most familiar with the child at the applicable facility  
10 in applying and using the reasonable and prudent parent  
11 standard.

12 (2) Consistent with its case and placement planning  
13 responsibilities under Federal and State law, ensure that the  
14 child's ~~individual~~ service plan provides the opportunity to <--  
15 participate in age-appropriate ~~and~~ OR developmentally <--  
16 appropriate activities and experiences to the greatest extent  
17 possible to promote healthy child and adolescent development  
18 consistent with Federal law and this act. A child's  
19 ~~individual~~ service plan shall include goals and objectives, <--  
20 and the child's progress toward meeting the goals and  
21 objectives, for the following:

22 (i) Participation in extracurricular, enrichment,  
23 cultural and social activities.

24 (ii) For a child who is ~~16~~ 14 years of age or older, <--  
25 providing opportunities to gain experience in mastering  
26 ~~independent living~~ skills NEEDED TO TRANSITION TO <--  
27 SUCCESSFUL ADULTHOOD and managing freedom and  
28 responsibility.

29 Section 7. Dispositional review and permanency hearings.

30 At a ~~dispositional review~~ PERMANENCY hearing under 42 Pa.C.S. <--

1 § 6351 (relating to disposition of dependent child), the court  
2 shall make findings that the child be provided with the  
3 opportunity to participate in age-appropriate ~~and~~ OR <--  
4 developmentally appropriate activities and experiences, to the  
5 greatest extent possible, to promote healthy child and  
6 adolescent development, consistent with Federal law and this  
7 act.

8 Section 8. Notifications.

9 (a) Caregiver.--The appropriate county agency shall provide  
10 a caregiver with written notification of the caregiver's  
11 responsibilities and rights under this act. The notification  
12 shall be provided at the time of the caregiver's licensure or  
13 court approval and annually thereafter.

14 (b) Child.--~~The Office of Children, Youth and Families of~~ <--  
15 ~~the department~~ COUNTY AGENCY shall: <--

16 (1) Explain the rights of children under this act at  
17 least annually as part of the family service and permanency  
18 planning process and provide a child in an out-of-home  
19 placement with a written explanation of the requirements of  
20 this act. Consistent with the act of November 23, 2010  
21 (P.L.1264, No.119), known as the Children in Foster Care Act,  
22 the requirements of this paragraph shall be included in the  
23 list of requirements under section 3 of the Children in  
24 Foster Care Act, along with the explanation of the grievance  
25 policy. A notation that these notifications have been  
26 completed must be made in the child's record.

27 (2) Work with interested parties, including children, to  
28 develop age-appropriate written materials that explain  
29 children's rights under this act.

30 Section 9. This act shall take effect in 60 days.