

## No. 2015-75

## AN ACT

## HB 477

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

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

Section 1. Short title.

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

Section 2. Legislative intent.

The General Assembly finds and declares as follows:

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

(2) When a caregiver of a child in an out-of-home placement makes a decision regarding the child's participation in an activity, the caregiver must consider applicable laws and policies designed to safeguard the child's health and safety. However, these laws and policies are sometimes interpreted to prohibit a child from participating in age-appropriate or developmentally appropriate extracurricular and community activities that are important to healthy child and adolescent development.

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

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

Section 3. Definitions.

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

"Age-appropriate or developmentally appropriate." The following:

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

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

"Caregiver." A person with whom the child is placed in an out-of-home placement, including a resource family or an individual designated by a county agency or private agency. The resource family is the caregiver for any child placed with them.

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

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

"Out-of-home placement." A setting that provides 24-hour substitute care for a child away from the child's parents or guardians and for whom the county agency has placement care and responsibility. The term includes resource family homes and supervised settings in which a child is living and, for a child who has attained 18 years of age, a supervised setting in which the individual is living independently. The term does not include secure facilities, facilities operated primarily for the detention of children who have been adjudicated delinquent, accredited psychiatric residential treatment facilities or hospitals.

"Private agency." An entity that provides out-of-home placement services to children under a contract with a county agency.

"Reasonable and prudent parent standard." The standard, characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while encouraging the emotional and developmental growth of the child, that a caregiver must use when determining whether to allow a child in an out-of-home placement under the responsibility of the county agency to participate in extracurricular, enrichment, cultural and social activities.

"Resource family." As defined under section 3 of the act of November 22, 2005 (P.L.404, No.73), known as the Resource Family Care Act. Section 4. Access and standard.

(a) Access to activities and experiences.—Subject to subsection (b), a child in an out-of-home placement is allowed and afforded an opportunity to engage in, to the greatest extent possible, age-appropriate or developmentally appropriate activities and experiences. A child with a disability or special needs in an out-of-home placement shall have the same access to age-appropriate or developmentally appropriate activities and experiences as the child's nondisabled peers, even if reasonable accommodations are required.

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

(1) Must be exercised using the reasonable and prudent parent standard and does not conflict with any applicable court order or service plan.

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

(c) Reasonable and prudent parent standard.—When using the reasonable and prudent parent standard:

(1) A caregiver must consider all of the following:

(i) The child's age, maturity and developmental level to maintain the overall health and safety of the child.

(ii) The potential risk factors to the child or to others and the appropriateness of the extracurricular, enrichment, cultural or social activity or experience.

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

(iv) The importance of encouraging the child's emotional and developmental growth.

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

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

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

(2) The child's wishes, though not determinative, may also be considered.

(d) Limitation of liability.—A caregiver, county agency and private agency shall not be liable for harm caused to a child while engaged in an activity or experience approved by the caregiver if:

(1) the caregiver has completed the required training relating to the reasonable and prudent parent standard;

(2) the caregiver has made a good faith effort to use the reasonable and prudent parent standard in approving the activity or experience; and

(3) the approval does not conflict with any applicable court order or service plan.

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

#### Section 5. Obligations of department.

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

(1) Require, as a condition of licensure for county and private foster family care agencies and facilities providing out-of-home placements, the development of standards and training relating to the reasonable and prudent parent standard. The standards and training shall include, but are not limited to, the following:

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

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

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

(B) decisions involving the signing of permission slips and arranging transportation for the child to and from extracurricular, enrichment, cultural and social activities; and

(C) methods for appropriately considering the concerns of the biological parents of a child in decisions related to participation of the child in activities, with the understanding that those concerns should not necessarily determine the participation of the child in any activity.

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

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

(ii) Implement policies consistent with this act.

(iii) Provide and document that the required training under paragraph (1) has been provided to caregivers.

(3) Develop standards and a process by which individuals employed by facilities providing out-of-home placements are designated to make decisions for children based on the reasonable and prudent parent standard.

(4) Develop a template for the required training related to the reasonable and prudent parent standard in accordance with this act.

(5) Work with interested parties, including children, to develop age-appropriate written materials that explain the requirements under this act.

#### Section 6. County obligations.

A county agency shall do all of the following:

(1) Ensure that all county-operated out-of-home placement settings other than a resource family home designate an individual to provide decision-making authority under the reasonable and prudent parent standard for children residing in their care. The individual designated should consult with county agency caseworkers or staff members who are most familiar with the child in applying and using the reasonable and prudent parent standard.

(2) Ensure that contracts for purchased services between the county and a private agency that operates an out-of-home placement setting other than a resource family home include a requirement for the agency to designate an individual to provide decision-making authority under the reasonable and prudent parent standard for children residing in their care in accordance with staffing and supervision requirements applicable to the setting. The individual designated should consult with county agency and private agency caseworkers or staff members who are most familiar with the child in applying and using the reasonable and prudent parent standard.

(3) Ensure that contracts for purchased services between the county and a private agency include a requirement for the private agency to

provide training and monitoring of resource families regarding the application and use of the reasonable and prudent parent standard.

(4) Provide training and monitoring of county agency resource families regarding the application and use of the reasonable and prudent parent standard.

(5) Consistent with its case and placement planning responsibilities under Federal and State law, ensure that the child's service plan provides the opportunity to participate in age-appropriate or developmentally appropriate activities and experiences to the greatest extent possible to promote healthy child and adolescent development. A child's service plan shall include goals and objectives, and the child's progress toward meeting the goals and objectives, for the following:

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

(ii) For a child who is 14 years of age or older, providing opportunities to gain experience in mastering skills needed to transition to adulthood and managing freedom and responsibility.

#### Section 7. Notifications.

(a) Caregiver.—The appropriate county agency shall ensure that a caregiver is provided with a written notification of the caregiver's responsibilities and rights under this act. The notification shall be provided at the time of a resource family home certification or the designation of a caregiver by a county agency or private agency and annually thereafter.

(b) Child.—The county agency shall ensure that children in out-of-home placement have their opportunities under this act explained to them in a manner appropriate to the child's age, development and maturity and that the children are provided with a written explanation of the requirements of this act at initial placement, for any subsequent move, and at least annually as part of the family service and permanency planning process. Consistent with the act of November 23, 2010 (P.L.1264, No.119), known as the Children in Foster Care Act, the requirements of this subsection shall be included in the list of requirements under section 3 of the Children in Foster Care Act, along with the explanation of the grievance policy. A notation that these notifications have been completed must be made in the child's record.

#### Section 8. Training.

The reasonable and prudent parent standard training required under this act must be completed as follows:

(1) A current caregiver must complete the training by December 31, 2015.

(2) An individual who becomes a caregiver after the effective date of this section must complete the training prior to a child's placement, unless there is an emergency placement.

(3) If a child is placed in an emergency placement after the effective date of this section, the caregiver shall complete the training within 60 days of the emergency placement.

Section 9. This act shall take effect immediately.

APPROVED—The 10th day of December, A.D. 2015

TOM WOLF