

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 83064(e)

Specific Purpose:

The Department is adopting this regulation to clarify that small family home licensees have the responsibility to develop a specified plan to make accessible postsecondary vocational/educational information, as specified.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information. This regulation is adopted to ensure that postsecondary information is made accessible to foster children 16 years of age or older.

Final Modification:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24) and amendments to Section 83072(c)(29), the licensee is only required to allow access to existing education information instead of developing a plan for making the information accessible. Therefore, for clarity, the phrase "develop a plan for making accessible" is replaced with the phrase "allow access to existing" information.

Section 83064(e)(1) et seq.

Specific Purpose:

This regulation is adopted to clarify for licensees the type of educational/vocational information that they may make accessible for foster children 16 years of age or older that will satisfy this requirement. Licensees are not limited by the examples given by this regulation.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively.

This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give licensees direction and suggestions as to the type of information that will satisfy this requirement.

Final Modification

This section is modified in response to public testimony. Sections 83064(e)(1)(D) and (F) are modified to add additional financial aid options and other resources licensees may provide children 16 years of age or older. The Department agrees that allowing licensees to provide this information will further aid foster youth in seeking vocational and postsecondary educational options. This modification meets the spirit and intent of SB 1639, Chapter 668, Statutes of 2004.

Post-hearing Modification

Section 83072(c)(9)

Specific Purpose:

Section 83072(c)(9) is modified to include a cross reference to Section 83072(c)(11).

Factual Basis:

In response to public testimony, the Department is amending this section to clarify that the home provided and the treatment a child receives must be in accordance with Section 83072(c)(11). Section 83072(c)(11) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 83072(c)(11)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in small family homes shall have the right to equal access to all available services, placement, care, treatment and benefits and not be subject to harassment or discrimination as specified.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care.

Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. AB 458, Chapter 331, Statute of 2003 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Post-hearing Modification

Section 83072(c)(12)(A)

Specific Purpose:

The Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 83072(c)(11).

Factual Basis:

In response to public testimony, the Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 83072(c)(11). Section 83072(c)(11) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Sections 83072(c)(13) through (28)

Specific Purpose/Factual Basis:

These sections are renumbered to meet the “clarity” standard of the Administrative Procedure Act, Government Code Section 11349(c).

Final Modification:

Sections 83072(c)(20) and (22)

Specific Purpose:

The Department is amending these sections by adding the phrase “in accordance with Section 83072(c)(11)” in reference to fair and equal access to school and extracurricular activities in subsection (c)(20) and to social contacts with people outside the foster care system in subsection (c)(22).

Factual Basis:

In response to prior public testimony, the Department is adding this phrase to clarify that activities, as well as social contacts, must be in accordance with Section 83072(c)(11). Section 83072(c)(11), incorporating Welfare and Institutions Code Section 16001.9(a)(23), requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 83072(c)(29)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in small family homes shall have the right, if they are 16 years old or older, to have access to existing educational information regarding postsecondary and/or vocational programs.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. SB 1639, Chapter 668, Statute of 2004 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Section 84022(b)(5)

Specific Purpose:

The Department is adopting this regulation to clarify that group home licensees shall include in their plan of operation a plan to make accessible postsecondary vocational/educational information, as specified.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information. This regulation

is adopted to ensure that postsecondary information is made accessible to foster children 16 years of age or older.

Final Modification:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24) and amendments to Section 84072(c)(34), the licensee is only required to allow access to existing education information instead of to develop a plan for making the information accessible. Therefore, the amendments adding subsection (b)(5), et seq. to Section 84022, Plan of Operation, are repealed and moved to new subsection (e), et seq., of Section 84079, Planned Activities.

Section 84022(b)(5)(A) et seq.

Specific Purpose:

This regulation is adopted to clarify for licensees the type of educational/vocational information that they may make accessible for foster children 16 years of age or older that will satisfy this requirement. Licensees are not limited by the examples given by this regulation.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give licensees direction and suggestions as to the type of information that will satisfy this requirement.

Final Modification:

This section is modified in response to public testimony. Sections 84022(b)(5)(A)4. and 6. are modified to add additional financial aid options and other resources licensees may provide children 16 years of age or older. The Department agrees that allowing licensees to provide this information will further aid foster youth in seeking vocational and postsecondary educational options. This modification meets the spirit and intent of SB 1639, Chapter 668, Statutes of 2004.

Second Final Modification:

See Section 84022(b)(5), Final Modification.

Post-hearing Modification

Section 84072(c)(14)

Specific Purpose:

Section 84072(c)(14) is modified to include a cross reference to Section 84072(c)(16).

Factual Basis:

In response to public testimony, the Department is amending this section to clarify that the home provided and the treatment a child receives must be in accordance with Section 84072(c)(16). Section 84072(c)(16) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 84072(c)(16)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in group homes shall have the right to equal access to all available services, placement, care, treatment and benefits and not be subject to harassment or discrimination as specified.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. AB 458, Chapter 331, Statute of 2003 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Post-hearing Modification

Section 84072(c)(17)(A)

Specific Purpose:

The Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 84072(c)(16).

Factual Basis:

In response to public testimony, the Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 84072(c)(16). Section 84072(c)(16) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Sections 84072(c)(18) through (33)

Specific Purpose/Factual Basis:

These sections have been renumbered for purposes of clarity. Further, these sections are renumbered to meet the “clarity” standard of the Administrative Procedure Act, Government Code Section 11349(c).

Final Modification:

Sections 84072(c)(25) and (27)

Specific Purpose:

The Department is amending these sections by adding the phrase “in accordance with Section 84072(c)(16)” in reference to fair and equal access to school and extracurricular activities in subsection (c)(25) and to social contacts with people outside the foster care system in subsection (c)(27).

Factual Basis:

In response to prior public testimony, the Department is adding this phrase to clarify that activities, as well as social contacts, must be in accordance with Section 84072(c)(16). Section 84072(c)(16), incorporating Welfare and Institutions Code Section 16001.9(a)(23), requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 84072(c)(34)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in group homes shall have the right, if they are 16 years old or older, to have access to existing educational information regarding postsecondary and/or vocational programs.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. SB 1639, Chapter 668, Statute of 2004 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Post-hearing Modification

Section 84079(e)

Specific Purpose/Factual Basis:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24) and amendments to Section 84072(c)(34), the licensee is required to allow access to existing education information. Therefore, the prior language from amended Section 84022(b)(5), et seq. (now repealed) is modified and placed in Section 84079(e).

Section 84172 Handbook

Specific Purpose/Factual Basis:

The Handbook is being amended to accurately reflect the changes in the Welfare and Institutions Code Section 16001.9 of the Welfare and Institutions Code.

Post -15-day Renotice Modification:

Specific Purpose:

This section of the Handbook is being amended to accurately reflect the changes in Welfare and Institutions Code Section 16001.9 as a result of AB 1412, Chapter 640, Statutes of 2005.

Factual Basis:

This revision is necessary to comply with AB 1412, Chapter 640, Statutes of 2005, which added a new personal right to the Welfare and Institutions Code Section 16001.9. The Department was in the process of drafting this regulation package prior to the passage of AB 1412. The Department will Handbook the new personal right and re-number this Section for consistency.

Final Modification:

This section of the regulation is being modified in order to comply with the requirement of AB 1412, Chapter 640, Statutes of 2005, which added a new personal right to the Welfare and Institution Code section 16001.9. The Department agrees that adding the new personal right to the Handbook and re-numbering this section will provide consistency and clarity.

Post-Hearing Modification:

Section 84272(a)

Specific Purpose/Factual Basis:

In response to OAL's "Decision of Disapproval of Regulatory Action" for Children's Residential Group Home Regulations, the cross-reference to Sections 84072(d)(5), (25), (27) and (29), have been revised to read: Sections 84072(c)(5), (26), (28), and (30) for the purpose of consistency and clarity. Further, these sections are renumbered to meet the "clarity" standard of the Administrative Procedure Act, Government Code Section 11349(c).

Section 86022(a)(7)

Specific Purpose:

The Department is adopting this regulation to clarify that Transitional Housing Placement Program licensees shall include in their plan of operation a plan to make accessible postsecondary vocational/educational information, as specified.

Factual Basis:

This regulation is necessary to meet the "necessity" and "consistency" standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information. This regulation is adopted to ensure that postsecondary information is made accessible to foster children 16 years of age or older.

Final Modification:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24) and amendments to Section 86072(c)(22), the licensee is only required to allow access to existing education information instead of to develop a plan for making the information accessible. Therefore, the amendments adding subsection (a)(7), et seq. to Section 86022, Plan of Operation, are repealed and moved to new Section 86072.1, Educational Options.

Section 86022(a)(7)(A) et seq.

Specific Purpose:

This regulation is adopted to clarify for licensees the type of educational/vocational information that they may make accessible for foster children 16 years of age or older that will satisfy this requirement. Licensees are not limited by the examples given by this regulation.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give licensees direction and suggestions as to the type of information that will satisfy this requirement.

Final Modification:

This section is modified in response to public testimony. Sections 86022(a)(7)(A)(4.) and (6.) are modified to add additional financial aid options and other resources licensees may provide children 16 years of age or older. The Department agrees that allowing licensees to provide this information will further aid foster youth in seeking vocational and postsecondary educational options. This modification meets the spirit and intent of SB 1639, Chapter 668, Statutes of 2004.

Second Final Modification:

See Section 86022(a)(7), Final Modification.

Post-hearing Modification

Section 86072(d)(3)

Specific Purpose:

Section 86072(d)(3) is modified to include a cross reference to Section 86072(d)(5).

Factual Basis:

In response to public testimony, the Department is modifying this section to clarify that the requirements of Section 86072(d)(3) must be in accordance with Section 86072(d)(5). Section 86072(d)(5) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color,

religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 86072(d)(5)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in Transitional Housing Placement Programs shall have the right to equal access to all available services, placement, care, treatment and benefits and not be subject to harassment or discrimination as specified.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. AB 458, Chapter 331, Statute of 2003 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Section 86072(d)(5) through (21) and (23)

Specific Purpose/Factual Basis:

These sections are renumbered to meet the “clarity” standard of the Administrative Procedure Act, Government Code Section 11349(c).

Post Hearing Modification:

Section 86072(d)(8)

Specific Purpose:

The Department is amending this section by adding the phrase “in accordance with Section 86072(d)(5)” in reference to social contacts with people outside the foster care system.

Factual Basis:

In response to prior public testimony, the Department is adding this phrase to clarify that social contacts must be in accordance with Section 86072(d)(5). Section 86072(d)(5), incorporating Welfare and Institutions Code Section 16001.9(a)(23), requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic

group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Post Hearing Modification:

Section 86072(d)(19), et seq.

Specific Purpose:

The Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 86072(d)(5).

Factual Basis:

In response to prior public testimony, the Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 86072(d)(5). Section 86072(d)(5) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 86072(d)(22)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in Transitional Housing Placement Programs shall have the right, if they are 16 years old or older, to have access to educational information options regarding existing postsecondary and/or vocational programs.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. SB 1639, Chapter 668, Statute of 2004 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Final Modification:

The phrase “At 16 years or older,” is deleted as all of Chapter 7 applies only to children 16 years or older. The deletion is made for consistency and clarity.

Post Hearing Modification:

Section 86072.1 (Title)

Specific Purpose:

The Department is adding a new section, titled "Educational Options."

Factual Basis:

This section is needed to re-locate the prior amendments in Plan of Operation, Section 86022(a)(7) et seq.

Section 86072.1

Specific Purpose:

The Department is adopting this section regulation to state that Transitional Housing Placement Program licensees shall allow access to existing information regarding available vocational and postsecondary educational options as specified in Section 86072(d)(22).

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information, as stated in Section 86072(c)(22). This regulation is adopted to ensure that postsecondary information is made accessible to children in Transitional Housing Placement Programs.

Section 86072.1(a) through (a)(6)

Specific Purpose:

These subsections are adopted to clarify for licensees the type of educational/vocational information that they may make accessible for children in Transitional Housing Placement Programs that will satisfy this requirement. Licensees are not limited by the examples given by this regulation.

Factual Basis:

These sections are necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give licensees direction and suggestions as to the type of information that will satisfy this requirement.

Section 88022(a)(4)(C)1.

Specific Purpose:

The Department is adopting this regulation to clarify that Foster Family Agency licensees shall include in their plan of operation a plan to make accessible postsecondary vocational/educational information, as specified.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information. This regulation is adopted to ensure that postsecondary information is made accessible to foster children 16 years of age or older.

Final Modification:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24), the licensee is only required to allow access to existing education information instead of to develop a plan for making the information accessible. Therefore, the amendments adding subsection (a)(4)(C)1, and 2, et seq. to Section 88022, Plan of Operation, are repealed.

Section 88022(a)(4)(C)2. et seq.

Specific Purpose:

This regulation is adopted to clarify for licensees the type of educational/vocational information that they may make accessible for foster children 16 years of age or older that will satisfy this requirement. Licensees are not limited by the examples given by this regulation.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give licensees direction and suggestions as to the type of information that will satisfy this requirement.

Final Modification

This section is modified in response to public testimony. Sections 88022(a)(4)(C)2.d. and f. are modified to add additional financial aid options and other resources licensees may provide children 16 years of age or older. The Department agrees that allowing licensees to provide this information will further aid foster youth in seeking vocational and postsecondary educational options. This modification meets the spirit and intent of SB 1639, Chapter 668, Statutes of 2004.

Second Final Modification:

See Section 88022(a)(4)(C)1., Final Modification.

Section 89372(c)(3)

Specific Purpose:

The Department is amending this regulation to clarify that children cared for in foster family homes shall have the right to equal access to all available services, placement, care, treatment and benefits and not be subject to harassment or discrimination as specified.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. AB 458, Chapter 331, Statute of 2003 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Post-hearing Modification

Section 89372(c)(6)

Specific Purpose:

The Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 89372(c)(3).

Factual Basis:

In response to public testimony, the Department is adopting this section to clarify that clothing and personal items provided must be in accordance with Section 89372(c)(3). Section 89372(c)(3) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Final Modification:

The word “Subsection” is corrected to “Section” for consistency and clarity.

Post-hearing Modification

Sections 89372(c)(10) and (c)(18)(E)

Specific Purpose:

The Department is amending these sections by adding the phrase “in accordance with Section 89372(c)(3)” in reference to social contacts with people outside the foster care system in subsection (c)(10) and to school and extracurricular activities in subsection (c)(18)(E).

Factual Basis:

In response to prior public testimony, the Department is adding this phrase to clarify that social contacts, as well as activities, must be in accordance with Section 89372(c)(3). Section 89372(c)(3), incorporating Welfare and Institutions Code Section 16001.9(a)(23), requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This modification meets the spirit and intent of AB 458.

Section 89372(c)(25)

Specific Purpose:

The Department is adopting this regulation to clarify that children cared for in foster family homes shall have the right, if they are 16 years old or older, to have access to educational information options regarding existing postsecondary and/or vocational programs.

Factual Basis:

This amendment is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with Section 16001.9 of the Welfare and Institutions Code that specifies a list of personal rights accorded to children in foster care. Prior law (AB 899, Chapter 683, Statute of 2001) mandated the Department to promulgate into regulation a list of all personal rights specified in Section 16001.9 of the Welfare and Institutions Code. SB 1639, Chapter 668, Statute of 2004 amended Section 16001.9 of the Welfare and Institutions Code by adding an additional personal right; this regulation incorporates that change.

Section 89379(c)

Specific Purpose:

The Department is adopting this regulation to clarify that foster family home caregivers shall develop a plan to make accessible postsecondary vocational/educational information for foster children 16 years old or older, as specified.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to have access to available postsecondary vocational/educational options and financial aid information. This regulation is adopted to ensure that postsecondary information is made accessible to foster children 16 years of age or older.

Final Modification:

Consistent with Welfare and Institutions Code Section 16001.9(a)(24) and amendments to Section 89372(c)(25), the licensee is only required to allow access to existing education information instead of developing a plan for making the information accessible. Therefore, for clarity, the phrase “develop a plan for making accessible” is replaced with the phrase “allow access to existing” information. Additionally, for clarity, subsection (2) [sic] is incorporated in subsection (c) and subsections (2)(A) through (F) are renumbered to (c)(1) through (6).

Section 89379(c)(1) et seq.

Specific Purpose:

This regulation is adopted to clarify the type of educational/vocational information that foster family home caregivers may make accessible for foster children 16 years of age or older that will satisfy this requirement. Caregivers are not limited by the examples given by this regulation.

Factual Basis:

This regulation is necessary to meet the “necessity” and “consistency” standard of the Administrative Procedure Act, Government Code Sections 11349 (a) and (d), respectively. This regulation is necessary for consistency with the intent of Section 16001.9(a)(24) of the Welfare and Institutions Code that gives foster children the right to be given access to available postsecondary vocational/educational options and financial aid information. This regulation is intended to give direction and suggestions as to the type of information that will satisfy this requirement.

Final Modification

This section is modified in response to public testimony. Sections 89379(c)(1)(D) and (F) are modified to add additional financial aid options and other resources licensees may provide children 16 years of age or older. The Department agrees that allowing licensees to provide this information will further aid foster youth in seeking vocational and postsecondary educational options. This modification meets the spirit and intent of SB 1639, Chapter 668, Statutes of 2004.

Second Final Modification:

See Section 89379(c), Final Modification.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 458, Chapter 331, Statute of 2003

Senate Bill 1639, Chapter 668, Statute of 2004

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not on local school districts. There are no reimbursable state-mandated costs because these regulations only make technical and clarifying changes.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Statement of Compliance

CDSS complied with the consultation requirement of Health and Safety Code Section 1530.5.

g) Testimony and Response

These regulations were considered as Item #2 at the public hearing held on August 17, 2005 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from July 1, 2005 to 5:00 p.m. August 17, 2005:

- Youth Law Center - Jennifer Troia, Equal Justice Works Fellow
- National Center for Lesbian Rights - Jody Marksamer, Equal Justice Works Fellow

The comments received and the Department's responses to those comments follow. Jennifer Troia, Equal Justice Works Fellow, Youth Law Center, submitted the following comments (Comment 1- 16):

1. Comment:

RE: ORD # 1104-06, Item # 2
PROPOSED REGULATIONS ON FOSTER YOUTH PERSONAL RIGHTS

Again, we support the decision to issue regulations that implement SB 1639 and AB 458 and offer the suggestions below to strengthen these proposed regulations. We have also included related comments on additional foster youth personal rights to implement Welfare & Institutions Code § 16001.9.

A. Access to Information About Educational Options

The proposed language refers to financial aid information in conjunction with admissions information about particular schools" This may be confusing because some financial aid can be attached to federal or state-based applications and deadlines (not necessarily to a particular school's admission process) The proposed language also does not sufficiently

emphasize financial aid as a crucial and separate component of the information foster youth receive.

The regulations should include both the coursework required for youth to graduate from high school and additional coursework that may be necessary for admission to higher education so youth do not improperly assume the requirements are the same. The regulations should also reference other important resources that can assist youth. For example, many federal and state financial aid sources have information or applications online. Local Independent Living Skills Programs (ILSP) and other community resources can provide youth with face-to-face guidance (e.g. hands on assistance in completing applications), rather than simply information contained in papers"

Proposed Regulations (Additions underlined)

1. § 83064(e)(l)
 - (e) For children 16 years of age or older, the licensee shall develop a plan for making accessible information regarding available vocational and postsecondary educational options as specified in Section 83072 (c)(29).
 - (1) The information may include, but is not limited to, ~~any of the following:~~
 - (A) Admission criteria for universities, community colleges, trade or vocational schools ~~and financial aid information for these schools.~~
 - (B) Financial aid information, including information about federal, state and school-specific aid, state and school-specific scholarships, grants and loans, as well as aid available specifically to current or former foster youth and contact information for the Student Aid Commission.
 - (C) Informational brochures and internet research on postsecondary or vocational schools/programs.
 - (D) Campus tours.
 - (D) Internet research on ~~postsecondary or vocational schools/programs~~ sources of financial aid, Independent Living Skills Program offerings, and other local resources to assist youth.
 - (E) School sponsored events promoting postsecondary or vocational schools/programs"

The same or similar change should be made to the following regulations:

- § 84022 (b)(5)(A);
- § 86022 (a)(7)(A);
- § 88022 (a)(4)(C)(2);
- § 89379 (c)(l)

Response:

The Department agrees. The suggested changes expressed in this comment will provide further clarity and guidance, especially in the area of financial aid information. These changes also meet the spirit and intent of statute. The Department will make the changes

to the regulations and the final modification to the final statement of reasons. Thank you for your comment.

2. Comment:

2. § 83072 (c)(29)

- (c) At admission, each child, and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below: (Continued)
(29) At 16 years or older, to have access to existing information regarding available educational options, including, but not limited to, coursework necessary for high school graduation and admission to vocational and postsecondary educational programs, and financial aid information ~~for these programs~~.

The same or similar change should be made to the following regulations:

- § 84072 (c)(34);
§ 86072 (d)(22);
§ 88022 (a)(4)(C)(1);
§ 89372 (c)(25)

Response:

This request is outside the scope of the regulations. Providing foster children with high school graduation information is the responsibility of the high school via the high school counselor, not the licensee. A foster child already has this right simply by asking the school counselor. The language course work necessary for vocational and postsecondary educational programs implies admission criteria for vocational and postsecondary educational programs. No change will be made to these regulations based on this comment.

3. Comment:

- B. Fair and equal access to all available services without discrimination or harassment

The legislature amended WIC § 16001.9 in order to combat the harm that foster youth suffer when they are discriminated against based on their actual or perceived sex, sexual orientation, gender identity, or HIV status. This harm could result from discrimination by licensees who impede their residents' abilities to maintain their social lives as they choose or wear clothing and be addressed by the name and pronoun of their choice. The regulations should ensure that these and other important rights are respected. The regulations should also ensure that facilities meet training requirements the legislature called "crucial to enable all persons involved in providing care, placement, and services to

foster children to fulfill then, responsibilities..." in AB 458. See, e.g., Health & Safety Code §§ 1522.41; 1529.2.

1. § 80022 (Could alternatively be incorporated into §§ 84022; 86022 and 88022)
 - (a) Each licensee shall have and maintain on file a current, written, definitive plan of operation..
 - (b) The plan and related materials shall contain the following:
 - (1) - (14)
 - (15) A plan for how the facility will ensure that its staff meet initial and ongoing training requirements about how to provide safe and nondiscriminatory care and services to foster children, regardless of their actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Licensees whose Plans of Operation predate this requirement have 90 days from when it becomes effective to submit this additional information to supplement their Plans of Operation.

Response:

These regulations implement the personal rights provisions of AB 458 and SB 1639. The training requirement provisions of AB 458, affecting group home administrators, foster parents, relative caregivers, and licensing personnel will be addressed in another regulation package. No change to the regulations will be made based on this comment. Thank you for your comment.

4. Comment:

2. § 89372 (c)(6)
 - (a) The caregiver shall ensure that each child is accorded the personal rights specified in this section
 - (b) Each child, and his/her authorized representative, shall be personally advised, and given at admission a copy, of the rights specified in (c) below
 - (c) Each child shall have personal rights which include but are not limited to the following:
 - (6) To be provided adequate clothing and personal items.
 - (A) Clothing and personal items provided shall be appropriate to the youth's self-identified gender.
 - (B) To wear his/her own clothes.
 - (C) To possess and use his/her own personal items including toiletries.

The same or similar change should be made to the following sections:

- § 84072 (c)(16)
§ 83072 (c)(1)(C)(2); (c)(4) and (c)(11)

Response:

The Department will adopt Section 89372(c)(6)(A), 83072(c)(12)(A), and 84072(c)(17)(A) to specify that clothing and personal items provided must be in accordance with the corresponding Sections 89372(c)(3), 83072(c)(11), and 84072(c)(16). Sections 89372(c)(3), 83072(c)(11), and 84072(c)(16), require that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

5. Comment:

3. § 83072 (c)(11) (according to CDSS' proposed changes)

(c) At admission, each child, and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below: (Continued)

(11) To have fair and equal access to all available services, placement care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(A) This includes, but is not limited to the right to:

1. Maintain contact with others and have visitors as the law otherwise allows regardless of the youth or other individuals' sex, sexual orientation, gender identity, or HIV status.
2. Participate in extra-curricular activities, including those related to the lesbian, gay, bisexual, or transgender communities.
3. Be addressed by the name and pronoun of the youth's choice regardless of actual or perceived sex.
4. Have access to a safe and appropriate bathroom.

The same or similar change should be made to the following sections:

§ 84072 (c)(16);

§ 86072 (d)(5);

§ 89372 (c)(3).

Response:

The Department will amend Section 83072(c)(9), 84072(c)(14), and 86072(d)(3) to specify that the requirements of these section must be in accordance with corresponding Sections 83072(c)(11), 84072(c)(16) and 86072(d)(5). These Sections require that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group

identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

6. Comment:

C. Communications

Foster youth have statutory rights to make and receive confidential calls (unless prohibited by court order), to contact family members (unless prohibited by court order), to maintain relationships with people outside of their foster care placements and participate in age appropriate activities, and to contact CCL, the Ombudsman, social workers, probation officers, attorneys, CASAs, as well as other foster youth advocates and supporters. WIC §§ 362.05, 366, 16001, 9. They also have the right to send and receive unopened correspondence (unless prohibited by court order). WIC § 16001.9. Other licensed facility residents generally have similar rights to access a telephone they can use to make and receive confidential calls. Regulations should clarify the implementation of these statutes and ensure that facilities do not impede, but facilitate, residents' communication rights.

For example, since foster youth have a statutory right to make and receive confidential telephone calls unless prohibited by court order, the regulations may not authorize anyone other than the court to prohibit youth from making or receiving telephone calls. Care providers may place reasonable limits only on the time, place, and manner of calls. In addition, if foster youth who generally do not have access to financial resources are required to pay for calls to a family member, attorney or CASA, their statutory rights to remain in contact with those individuals are not being respected.

The proposed amendments below would ensure communications access and confidentiality.

Proposed Regulations

1. § 81088 (or § 80073)

- (b) In addition to section 80088, as a condition of licensure, the following shall apply. (Continued)
- (f) The licensee shall provide and maintain the equipment and supplies necessary to meet the requirements of the planned activity program" (Continued)
- (g) Residential licensees shall provide and maintain a sufficient number of telephones located in a manner that ensures every resident has reasonable access to a telephone to make and receive confidential calls in accordance with their rights to do so.
 - (1) Residents may also own or possess cellular telephones, subject to the same restrictions on access as regular calls and prohibitions on use as part of a discipline program. (Continued)

Response:

The suggested changes go beyond the scope of these regulations. These proposed regulations implement Assembly Bill (AB) 458, Chapter 331, Statute of 2003 and Senate Bill (SB) 1639, Chapter 668, Statute of 2004, by according children in foster care new personal rights.

- AB 458 codifies specific anti-discrimination protections and allows foster children the right to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harrassment on the basis of specified protected rights.
- SB 1639 allows foster children, who are 16 years of age or older, the right to have access to postsecondary educational and/or vocational and financial aid information.

Moreover, The Administrative Procedure Act, Government Code Section 11346.8 provides in part:

- “No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5 (Public Notice), unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change would result from the originally proposed regulatory action...”

The proposed changes expressed in this comment would constitute a substantive change that is not sufficiently related to the original notice and text. Also, at the very minimum, these proposed changes require more discussion and are not appropriate for the current regulation package. No change to the regulations based on this comment.

7. Comment:

2. § 84072 (c)(9)

- (a) The caregiver shall ensure that each child is accorded the personal rights specified in this section
- (b) Each child, and his/her authorized representative, shall be personally advised, and given at admission a copy, of the rights specified in (c) below"
- (c) Each child shall have personal rights which include but are not limited to the following: (Continued)
 - (9) To possess and use his/her own personal items, including but not limited to communication and entertainment devices, unless prohibited as part of a discipline program

The same or similar change should be made to the following regulation:

§ 83072 (c)(4);
§ 89372 (c)(6)(B)

Response:

Please refer to the response to comment number 6. Thank you for your comment.

8. Comment:

3. § 89372

- (a) The caregiver shall ensure that each child is accorded the personal rights specified in this section.
- (b) Each child, and his/her authorized representative, shall be personally advised, and given at admission a copy, of the rights specified in (c) below.
- (c) Each child shall have personal rights which include but are not limited to the following: (Continued)
 - (16) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.
 - (A) Local telephone call service must be provided at no cost to residents. Long distance service must be provided at no cost to residents for calls to individuals with whom they have a right to remain in contact. This includes, but is not limited to, the child's authorized representative, placement agency, family members (except by court order), social workers, attorneys, Court Appointed Special Advocates (CASA), probation officers, the Community Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson. For children over the age of 10 who live in group homes, this also includes individuals whom they have identified as important to them, consistent with their best interest.
 - (B) Reasonable restrictions may be imposed by the ~~social worker~~/caregiver to calls and correspondence as a disciplinary measure.
 - (B) No restrictions shall be applied to those listed in (c)(12) above
 - (C) Other reasonable restrictions may be imposed. The caregiver may:
 - 1. Request long distance cost reimbursement, for calls made by the child to individuals with whom the child does not have a statutory right to remain in contact, from the child or his/her authorized representative;
 - 2. Be permitted to deny the making of long distance calls by the child to individuals with whom the child does not have a statutory right to remain in contact, upon verification that previous long distance calls have not been paid.
 - 3. Ensure that telephone use does not infringe upon the rights of others, nor tie up the phone during emergencies;

4. Restrict the child's telephone use as reasonable discipline in compliance with (B) above, and shall be subject to social worker review.

The same or similar change should be made to the following regulations:

§ 83072 (c)(6)(A);
§ 84072 (c)(11)(A)"

Response:

Please refer to the response to comment number 6. Thank you for your comment.

9. Comment:

4. §83068.2

- (a) At the time of placement, the licensee or a designated person shall request for each child, a needs and services plan which describes the child's service needs.
(Continued)
- (b) The needs and services plan shall contain at a minimum the following information:
(Continued)
 - (1) - (8)
 - (9) Plans for how the child will have access to means of maintaining communication with individuals with whom the child has the right to remain in contact.
 - (10) Plans for providing services to meet the individual needs identified above.
(Continued)

The same or similar change should also be made to the following regulations:

§ 84068.2 (b);
§ 86068.2 (8);
§ 88068.2 (a).

Response:

Please refer to the response to comment number 6. Please note this issue is being addressed in regulation package ORD # 0505-06. Thank you for your comment.

10. Comment:

5. § 83072 (c)(7)

- (a) Each facility licensed to provide foster care for six or more children shall post a listing of a foster child's rights.

- (b) Each facility shall provide each school age child, who is placed in foster care, and his or her authorized representative with an age and developmentally appropriate orientation that includes an explanation of the rights of the child and addresses the child's questions and concerns.
- (c) At admission, each child, and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below: (Continued)
 - (7) To have access to letter writing material and to send and receive unopened correspondence unless prohibited by court order.
 - (A) Whenever possible, this shall include access to electronic mail.

The same or similar change should also be made to the following sections:

- § 89372 (c)(16);
- § 84072 (c)(12);
- § 86072 (d)(20)"

Response:

Please refer to the response to comment number 6. Thank you for your comment.

11. Comment:

D. Other Personal Rights Concerns

- A. Foster youth over the age of 12 are accorded the rights to review their case plans AND to receive information about their out-of-home placements. WIC § 16001 9 Crucial information "about out-of-home" placements is contained in Needs and Services plans, as well as caregiver records. Therefore, under the statute, these records should be made accessible to older foster youth

Proposed Regulations

1. § 83072

- (c) At admission, each child and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below: (Continued)
 - (24) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of- home placement and case plan, including being told of changes to the plan.
 - (A) This includes access to the child's Needs and Services Plan, as well as records maintained by the child's caregivers.

The same or similar change should be made to the following sections:

- § 84072 (c)(29);
- § 83072 (c)(24).

Response:

Please refer to the response to comment number 6. Thank you for your comment.

12. Comment:

- B. Foster youth have the right to be free from physical, sexual, emotional, or other abuse, and corporal punishment. *WIC* § 16001.9. Although verbal abuse seemingly falls into the category of "other" abuses, it may be helpful to licensees and youth to have it clearly delineated as a form of abuse that is prohibited.

Proposed Regulations

2. § 83072 (c)(10)

- (c) At admission, each child and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below; (Continued).
(10) To be free of physical, sexual, emotional, verbal, or other abuse, and corporal punishment.

The same or similar change should be made to the following sections:

§ 89372 (c)(2);
§ 84072 (c)(15);
§ 86072 (d)(3).

Response:

Expressly stating "verbal" is not necessary as this regulation implies prohibiting any form of abuse (including verbal abuse) by explicitly stating "...or other abuse." No change to the regulation based on this comment.

13. Comment:

- C. The current text of the group home regulations regarding health-related services references § 80075(h)(3), which no longer exists. Therefore, the regulation would be clearer if that reference was deleted or updated.

Also, the regulation should be clarified to ensure that foster youth who rely on medications, such as inhalers, during emergency situations will have adequate access to those medications if they are capable of responsibly self-administering them. If the medications are centrally stored, the youth may need to wait too long for them to be retrieved in order to obtain critical relief during an emergency.

Proposed Regulations

1. §84075

- (a) In addition to Section 80075, the following shall apply,
- (b) The licensee shall ensure that all prescribed medications that do not meet the requirements of (c) or (d) are centrally stored, ~~as provided in Section 80078(h)(3).~~
- (c) Youth may maintain possession of medications prescribed by physicians for self-administration in case of emergency, including but not limited to inhalation assistance devices or medications to prevent anaphylactic shock, unless a physician determines that the youth is not capable of such self-administration.
- (d) Youth may have ready access to medications prescribed by physicians for self-administration, including but not limited to inhalation assistance devices, insulin or allergy medications unless a physician determines that the youth is not capable of such self-administration.

Response:

Please refer to the response to comment number 6. Thank you for your comment.

14. Comment:

- D. Social workers are required by statute to inform foster youth of their rights as specified in *WIC § 16001.9* at least once every six months during a regularly scheduled contact. *WIC § 16501.1*. This important requirement is crucial to the implementation of the rights encapsulated in *WIC § 16001.9* and should be included in regulations.

Proposed Changes to the Manual of Policies and Procedures:

1. § 31-206

Case Planning

- .24 The schedule of planned social worker contacts and visits with the child and the family in accordance with Sections 31-320 and 31-325.

.241 The social worker shall document in the case record the scheduled dates that she/he will inform the child of his/her rights at least every six months in conformity with Welfare & Institutions Code § 16501.1.

.242 The social worker shall document in the case record the justification for any exceptions to the contact or visit requirements specified in Sections 31-320 and 31-325. (Continued)

Response:

This comment suggests changes in the Manual of Policies and Procedures which is not within CCLD purview. This regulation package only pertains to changes in Title 22. No change to the regulations based on this comment. Thank you for your comment.

15. Comment:

2. §:31-320
Social Worker/Probation Officer Contacts with The Child
- .1 The social worker/probation officer shall arrange for visitation, as determined in the child's case plan, for each child. (Continued)
 - .11 The purpose of social worker contact with the child is to achieve the following objectives: (Continued)
 - .115 Inform the child of his/her statutory rights as specified in Welfare & Institutions Code § 16001.9. (Continued)
- .4 The social worker shall do the following for each child with an approved case plan who is placed in out-of-home care with a relative, foster family home, FFA or a legal guardian: (Continued).
- .5 The social worker shall inform the child of his/her rights as specified in Welfare & Institutions Code § 16001.9 during regularly scheduled visits at least every six months.
- .6 The minimum visitation requirements for all services are not applicable under the following circumstances: (Continued).

Response:

Please refer to the response to comment number 14. Thank you for your comment.

16. Comment:

3. § 31-405.1
Social Worker Responsibilities for Placement
- (l) Monitor the child's physical and emotional condition, and take necessary actions to safeguard the child's growth and development while in placement.
- (m) Inform the child of his/her rights as specified in Welfare & Institutions Code § 16001.9 during regularly scheduled visits at least every six months.
- (n) Ensure that information regarding available CHDP services is provided to the out-of-home care provider within 30 days of the date of placement. (Continued).

Response:

Please refer to the response to comment number 14. Thank you for your comment.

Jody Marksamer, Equal Justice Works Fellow, National Center for Lesbian Rights, submitted the following comments (Comments17- 36):

17. Comment

I. REASONS FOR SUPPORTING PROPOSED CHANGES TO SECTIONS 83702, 84072, 84172, 86072, AND 89372.

NCLR supports these proposed changes to ensure that the personal rights of foster youth include the rights that were added under AB 458.

Response:

The Department appreciates your support. Thank you for your comment.

18. Comment:

II. REASONS FOR PROPOSING ADDITIONAL REGULATIONS.

Proposed Regulations to Clarify the Scope of Foster Children’s Personal Rights

It is the policy of the state that all children in foster care have the right to fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. In addition, all children in foster care have the right to live in a safe, healthy, and comfortable home where he or she is treated with respect and to be free from physical, sexual, emotional, or other abuse, or corporal punishment. In order to ensure that providers do not unwittingly violate these rights or allow others to, it is important that providers are given guidance and direction as to the scope and application of these rights when working with foster children who are vulnerable to harassment and abuse at the hands of other foster children. Therefore, licensees need to understand that they have a legal responsibility to ensure that a foster child’s right not to be harassed or discriminated against is not violated by other children or adults in the home. Existing regulations that provide guidance on duties and responsibilities should be amended to ensure that providers understand that the law requires that they protect foster children from harassment, violence, and intimidation at the hands of other children and adults in the home.

§83064 Licensee Duties and Responsibilities Small Family Homes

(b)

(10) Protecting each child from intimidation, harassment, and violence from other children and adults in the home on the basis of actual or perceived race, ethnic group identification,

ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Response:

These suggested changes are not necessary given that other regulations already protect children in foster care and accomplish similar outcomes. For example, licensees are charged with according children in foster care with personal rights including the right to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment on the basis of specified protected rights. Licensees are additionally charged with providing care and supervision to a child in care. Reiterating this right within the licensee's duties and responsibilities would be duplicative and unnecessary. No change to the regulations based on this comment.

19. Comment:

§ 84065.2 Personnel Duties Group Homes

(b) Child care staff shall perform the following duties:

(2) Protecting each child from intimidation, harassment, and violence from other children and adults in the group home on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Similar amendments should be made to clarify the duties and responsibilities of foster family homes, foster family agencies, and transitional housing placement programs under AB 458.

In addition, it is important that regulations clarify the scope of the personal rights of foster children who are or are perceived to be lesbian, gay, bisexual, or transgender. Existing regulations concerning the personal rights of foster children in group homes provide that foster children have the right to wear his or her own clothes. This regulation should be amended to clarify that in order not to discriminate based on sexual orientation or gender identity, foster children have the right to wear clothes and cut and style their hair that make sense for their gender. LGBT youth have experienced great difficulty in group homes regarding clothing and grooming. Often lesbian girls have not been allowed to wear masculine clothes or have been required to put on make-up and dresses in order to participate in group home activities. These actions are now discriminatory under AB 458 and the regulations should be amended to provide guidance to providers to ensure compliance with the law.

Response:

Please refer to the response to comment number 18. Thank you for your comment.

20. Comment:

§84072 Personal Rights Group Homes

(c)(6) To wear his/her own clothes;

(A) This includes allowing foster children to wear clothing and cut and style their hair in a manner that is appropriate with their self-identified gender.

(B) Foster children should not be required to wear clothing or cut or style their hair in a manner that is in conflict with their self-identified gender.

Response:

The Department will adopt Section 84072(c)(17)(A) to specify that clothing and personal items provided must be in accordance with Section 84072(c)(16). Section 84072(c)(16) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

21. Comment:

§83072 Personal Rights Small Family Homes

(c)(2) To wear his/her own clothes;

(A) This includes allowing foster children to wear clothing and cut and style their hair in a manner that is appropriate with their self-identified gender.

(B) Foster children should not be required to wear clothing or cut or style their hair in a manner that is in conflict with their self-identified gender.

Response:

The Department will adopt Section 83072(c)(12)(A) to specify that clothing and personal items provided must be in accordance with Section 83072(c)(11). Section 83072(c)(11) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

22. Comment:

§89372 Personal Rights Foster Family Homes

(c)(6) (A) To wear his/her own clothes.

1. This includes allowing foster children to wear clothing and cut and style their hair in a manner that is appropriate with their self-identified gender.

2. Foster children should not be required to wear clothing or cut or style their hair in a manner that is in conflict with their self-identified gender.

Response:

The Department will adopt Section 89372(c)(6)(A) to specify that clothing and personal items provided must be in accordance with Section 89372(c)(3). Section 89372(c)(3) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

23. Comment:

Existing regulations concerning the personal rights of foster children include the right to be treated with respect and to be safe. This regulation should be amended to clarify that in order to respect LGBT foster children and to not discriminate based on sexual orientation or gender identity, foster children who are LGBT have the right to be called by a name that reflects their self-identified gender and to have providers refer to them using pronouns that reflect their self-identified gender.

§89372 Personal Rights Foster Family Homes

(c)(3) To be treated with respect and to be free from physical, sexual, emotional or other abuse.

(A) This includes the right to be called by a name that reflects the foster child's self-identified gender and to have providers refer to them using a pronoun that reflects their self-identified gender.

Response:

Commentor's suggested changes are not necessary. Department's proposed changes to this section accomplish similar outcomes. No change to the regulations based on this comment.

24. Comment:

§84072 Personal Rights Group Homes

(c)(14) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(A) This includes the right to be called by a name that reflects the foster child's self-identified gender and to have providers refer to them using a pronoun that reflects their self-identified gender.

Response:

The Department will amend Section 84072(c)(14) to specify that the requirements of this section must be in accordance with Section 84072(c)(16). Section 84072(c)(16) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

25. Comment:

§83072 Personal Rights Small Family Homes

(c)(9) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(A) This includes the right to be called by a name that reflects the foster child's self-identified gender and to have providers refer to them using a pronoun that reflects their self-identified gender.

Response:

The Department will amend Section 83072(c)(9) to specify that the requirements of this section must be in accordance with Section 83072(c)(11). Section 83072(c)(11) requires that foster children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Thank you for your comment.

26. Comment:

§86072 Personal Rights Transitional Housing Placement Programs

(d) (3) To be treated with respect and to be free from physical, sexual, and emotional or other abuse.

(A) This includes the right to be called by a name that reflects the foster child's self-identified gender and to have providers refer to them using a pronoun that reflects their self-identified gender.

Foster youth have the right to make and maintain social contacts with people outside of the foster care system. Youth who are protected by AB 458 may be especially vulnerable to discrimination by licensees who obstruct these rights by failing to allow them to maintain their social lives as they chose. Therefore existing regulations regarding activities should be amended to require foster homes, group homes, and small foster family homes to permit foster children to attend and participate in lesbian, gay, bisexual, and transgender

community and extra-curricular activities that are age-appropriate. §84079, §83079, §89379.

Response:

The Department will amend Section 86072(d)(3) to specify that the requirements of this section must be in accordance with Section 86072(d)(5). Section 86072(d)(5) requires that foster children have fair and equal access to all available services, placement care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

In response to the second part of your comment, the Department agrees with your suggestions regarding the child's personal rights to attend school and participate in extra curricular, cultural and personal enrichment activities consistent with the child's age and development level, and to have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends. However, because this rulemaking is at the end of the one-year statutory period under Government Code Section 11346.4(b), the Department will incorporate your suggested changes in future regulation packages. Thank you for your comment.

Second Response:

On further review, the Department has implemented the concept of the request to amend regulations regarding activities by adding language cross-referencing the subsections in personal rights regulations that incorporate fair and equal access under Welfare and Institutions Code Section 16001.9(a)(23) into the subsections on activities and social contacts. Amendments are now made in Sections 83072(c)(20) and (c)(22), 84072(c)(25) and (c)(27), 86072(d)(8), and 89372(c)(10) and (c)(18)(E).

27. Comment:

Proposed Regulations to address Training Requirements Under AB 458

Because training is crucial to enable service providers and caregivers to fulfill their responsibilities to provide safe and nondiscriminatory care and services to foster children, AB 458 also mandates that initial and ongoing training for all group home administrators, foster parents, and department licensing personnel cover the rights of foster children to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Existing regulations define the components of the Initial Certification Training Program for group home administrators. The regulations lay out the number of curriculum hours required on each of the areas that make up the uniform Core of Knowledge. These regulations do not include the training that is now required under §1522.41 of the Health

and Safety Code (c)(1)(H) as amended by AB 458. As stated in §1522.41 (3), failure to comply with the requirements of this section are grounds for revocation of the license of the group home facility. Therefore, this regulation should be amended to ensure that group home administrators receive the minimum training under the law.

§84090 Initial Certification Training Program Approval Requirements for group home administrators

(h)(1)

(H) Six (6) hours of instruction on admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Response:

Please refer to the response to comment number 3. Thank you for your comment.

28. Comment:

Existing regulations define the training for foster parents that is required prior to placement and annually. These regulations refers to the requirements of § 1529.2 of the Health and Safety Code and incorporates the language of the section in the Handbook. The language of § 1529.2 that is included does not reflect the amendment to the section from AB 458. This regulation should be amended to ensure that foster parents receive the minimum training under the law.

§ 89405 training requirements for foster family homes

(b)

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(1)(b)(3)

(F) The right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Response:

Please refer to the response to comment number 3. Thank you for your comment.

29. Comment:

In addition, any regulations that address training requirements for community care licensing personnel should be amended to reflect the current language of § 1563 (c)(5).

As the legislature observed in AB 458, foster children are harmed by discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. County child welfare departments, group home facilities, and foster family agencies have a legal responsibility to provide care, placement, and services to foster children without discriminating on these grounds. The bill also states that initial and ongoing trainings for county child welfare workers, group home staff and administrators, foster family agency staff, foster parents, and relative caregivers is “crucial to enable all persons involved in providing care, placement, and services to foster children to fulfill their responsibilities to provide safe and nondiscriminatory care, placement, and services to foster children.” Therefore, group home facilities should ensure that personnel are trained on this responsibility.

§84605 Personnel Requirements Group Homes

(i)(3)

(R) Recreation activities and resources, including activities and resources for lesbian, gay, bisexual, and transgender youth; and

(S) The legal responsibility of group home personnel to provide safe care, placement, and services to foster children without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Response:

Please refer to the response to comment number 3. Thank you for your comment.

30. Comment:

In addition, in order for community care licensing to ensure that group home facilities, transitional living programs, and foster family agency staff and certified foster parents are prepared to provide care, placement, and services to foster children without discrimination, these facilities, programs, and agencies should be required to provide a training plan that addresses fulfilling this responsibility.

§88022 Foster Family Agencies Plan of Operation

(a)(5) A written description of the foster family agency training plan including:

(A)

(B) Initial and ongoing training of certified parent(s), including training in child abuse identification, prevention, and treatment and on the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic

group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(C) Initial and ongoing training in child abuse identification, prevention, and treatment and on the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status for foster family agency personnel who provide services to children, certified parent(s), and foster family home licensee(s).

Response:

Please refer to the response to comment number 3. Thank you for your comment.

31. Comment:

§86022 Transitional Housing Placement Program Plan of Operation

(a)(4)(D)

4. A plan for how the program will ensure that all of its staff receive sufficient training so they are prepared to provide care, placement, and services to foster children without discrimination on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

~~4.~~ 5. Qualifications of the trainer.

Response:

Please refer to the response to comment number 3. Thank you for your comment.

32. Comment:

§ 84022 Group Homes Plan of Operation

(5) A written description of the group home training plan including:

(A) A plan for how the facility will ensure that all of its staff receive sufficient training so they are prepared to provide care, placement, and services to foster children without discrimination on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Response:

Please refer to the response to comment number 3. Thank you for your comment.

33. Comment:

Proposed Regulations to Assist Community Care Licensing Personnel

With the understanding that foster children are also harmed by discrimination against their care providers, the legislature declared that it is the policy of the state that all persons engaged in providing care and services to foster children are to have fair and equal access to all available programs, benefits, services, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their client's or their own actual or perceived identification as specified under AB 458. This includes foster parents, adoptive parents, relative caregivers, and other caregivers contracting with county welfare departments. The regulations that address licensing process for foster parents, adoptive parents, relative caregivers and other should be amended to reflect this policy.

§89317 Applicant Qualifications Foster Family Homes

(a) Any adult shall be permitted to apply for a license regardless of sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, gender identity, HIV status, or ancestry.

Regulations regarding licensing qualifications for other provider populations including adoptive parents, relative caregivers, small family homes, and group homes should be amended in a similar manner in order to reflect the nondiscrimination provisions of AB 458.

Response:

The suggested changes go beyond the scope of these regulations since this topic (Qualification of applicants for license) was not initially included in this regulation package, the Administrative Procedure Act (APA). Government Code Section 11346.8 prohibits us from doing so now: The APA states:

“No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5 (Public Notice), unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change would result from the originally proposed regulatory action...”

The proposed changes expressed in this comment would constitute a substantive change that is not sufficiently related to the original notice and text. This suggestion will be addressed in another regulation package. No change to the regulations based on this comment.

34. Comment:

In addition, in order to ensure that the personal rights of foster children are not violated by facilities and programs that fail to fulfill their legal responsibilities under AB 458, an

amendment to existing regulations should be made in order to clarify to Department personnel that they may deny or revoke a group home administrator's certification if the certificate holder violates the personal rights of a foster child as guaranteed under AB 458.

§84064.4 Denial or Revocation of a Certificate Group Homes

(a) (6) The certificate holder fails to fulfill their legal responsibility to provide care, placement, and services to foster children, family members, foster parents, and services providers without discriminating on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

A similar amendment should be made regarding the denial or revocation of a foster family agency license.

Response:

The Department is concerned by any violation of a child's personal rights and has administrative actions currently in place to penalize licensees who commit violations. These administrative remedies will also include any violation of the right accorded to children by AB 458. No change to the regulations based on this comment. Thank you for your comment.

35. Comment:

In a similar vein, regulations regarding serious deficiencies in small family homes and group homes should be amended to include the personal rights of foster children.

§83051 Serious Deficiencies Small Family Homes

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(a) (5) Section 83072 relating to personal rights of children in small family homes.

Response:

Please refer to the response to comment number 34. Thank you for your comment.

36. Comment:

§84051 Serious Deficiencies Group Homes

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(a) (9) Section 84072 relating to personal rights.

Response:

Please refer to the response to comment number 34. Thank you for your comment.

- h) Pursuant to Government Code Section 11346.8, a 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoted for public comment from May 26, 2006 to June 12, 2006 was received from the following:

Jody Marksamer, Equal Justice Works Fellow, National Center for Lesbian Rights, submitted with a copy of previous testimony the following comments:

1. Comment:

I. REASONS FOR SUPPORTING PROPOSED CHANGES TO SECTIONS
83702,84072,84172,86072, AND 89372.

NCLR supports these proposed changes to ensure that the personal rights of foster youth include the rights that were added under AB 458 and other new laws.

II. REASONS "FOR PROPOSING FURTHER CHANGES.

A. Proposed Changes to Improve Consistency

(I) Numbering Inconsistency

When reviewing the modified language to the proposed regulatory action on foster youth personal rights, we noticed a numbering inconsistency in the reference to Welfare and Institutions Code Section 16001.9 in Section 84172. The Department has proposed updating Section 84172 to reflect the current language of Section 16001.9 by adding paragraphs 22 and 23. We believe that you meant to number these paragraphs 23 and 24 to be consistent with the Code (as indicated below).

§84172 Personal Rights (Community Treatment Facilities)

(5) Welfare and Institutions Code Section 16001.9 states:

(a) It is the policy of the state that all children in foster care shall have the following rights:
~~(22)~~(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

~~(23)~~(24) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

Response:

The Department agrees. It is the Department's intention to be consistent with W&I Code Section 16001.9. The Department was in the process of revising the regulations package at the time that AB 1412, Chapter 640, Statutes of 2005, became chaptered. The Department will amend the Handbook Section to be consistent with the current language of the W&I Code. Thank you for your comment.

2. Comment:

(2) Making Consistent the Amendments to the Transitional Housing Placement Programs Regulations

The modified language to the proposed regulatory action adds reference to the non-discrimination requirements of AB 458 in the provisions that discuss the right to receive adequate clothing for children living in group homes, small family homes, and foster family homes. No similar modification, however, is proposed with respect to the regulations addressing young people who are participating in transitional housing placement programs. According to current regulations, transitional housing placement program participants are afforded the same rights under Welfare and Institutions Code Section 16001.9 as other young people in foster care. Therefore, to be consistent with the other regulatory sections that you have proposed updating, the language of Section 86072 should be modified so that it is consistent with Sections 83072, 84072, and 89372 of the regulations (as indicated below).

§86072 Personal Rights (THPP)

(18) To possess and use his/her own personal possessions, including toilet articles and clothing, in accordance with Section 86072(d)(5).

Response:

The Department agrees that participants in Transitional Housing Placement Program (THPP) be afforded the right to possess and use his or her own personal possessions, including toilet articles and clothing in accordance with Section 86072(d)(5). However, because this rulemaking is at the end of the one-year statutory period under Government Code Section 11346.4(b), the Department will incorporate your suggested changes in future regulation packages. No change to the regulations will be made at this time. Thank you for your comment.

Second Response:

Consistent with language in Sections 83072(c)(12)(A), 84072(c)(17)(A), and 89372(c)(6), the Department is adopting language to clarify that clothing and personal items provided must be in accordance with Section 86072(d)(5), requiring that children have fair and equal access to all available services, placement, care, treatment and benefits and not be subjected to discrimination or harassment on the basis of race, ethnic group identification,

ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

3. Comment:

As established by the Welfare and Institutions Code Section 5326, foster children have the right to make and maintain social contacts with people outside of the foster care system as well as participate in extracurricular and cultural activities. As discussed in our prior comment letter, lesbian, gay, bisexual, and transgender (LGBT) youth are especially vulnerable to discrimination by licensees who obstruct these rights by failing to allow them to maintain their social connections to the LGBT community and participate in activities that are supportive of LGBT youth. Existing regulations regarding activities and social contacts for young people should be amended to include the right of foster children to attend and participate in age appropriate extracurricular and cultural activities and to maintain their social contacts without discrimination. (See discussion in 8/17/5 letter regarding proposed changes to §§84079, 83079, and 89379.) By including these changes, the sections that address extracurricular activities and social contacts will be consistent with the proposed modifications to the right to be safe and respected and the right to be provided adequate clothing. The following additions should be made to Sections 83072, 84072, 86072, and 89372:

(a) §83072 Personal Rights (Small Family Homes)

~~(19)(20)~~ To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and development level, in accordance with Section 83072 (c)(11).

~~(21)(22)~~ To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends, in accordance with Section 83072 (c)(11).

Response:

The Department agrees with your suggestions regarding the child's personal rights to attend school and participate in extra curricular, cultural and personal enrichment activities consistent with the child's age and development level, and to have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends. However, because this rulemaking is at the end of the one-year statutory period under Government Code Section 11346.4(b), the Department will incorporate your suggested changes in future regulation packages. No change to the regulations will be made at this time. Thank you for your comment.

Second Response:

On further review, the Department has adopted the proposed language in Sections 83072(c)(20) and (c)(22).

(b) §84072 Personal Rights (Group Homes)

~~(24)~~(25) To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and development level, in accordance with Section 84072 (c)(16).

~~(26)~~(27) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends, in accordance with Section 84072(c)(16).

Response:

Please refer to the response to comment number 3 (a). Thank you for your comment.

Second Response:

On further review, the Department has adopted the proposed language in Sections 84072(c)(25) and (c)(27).

(c) §86072 Personal Rights (Transitional Housing Placement Program)
~~(7)~~(8) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends, in accordance with Section 86072(d)(5).

Response:

Please refer to the response to comment number 3 (a). Thank you for your comment.

Second Response:

On further review, the Department has adopted the proposed language in Section 86072(d)(8).

(d) §89372 Personal Rights (Foster Family Homes)
(10) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors and friends, in accordance with Section 89372(c)(3).
(18)(E) To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and development level, in accordance with Section 89372 (c)(3).

Response:

Please refer to the response to comment number 3 (a). Thank you for your comment.

Second Response:

On further review, the Department has adopted the proposed language in Sections 89372(c)(10) and (c)(18)(E).

4. Comment:

B. Proposed Future Regulations

While the proposed amendments are an important step towards ensuring compliance with intervening statutory changes, additional amendments beyond the scope of this notice and comment period are needed to ensure full compliance with current California law. Specifically, in addition to updating the regulations regarding the rights of foster youth, regulations regarding training and licensing procedures need to be updated to reflect the changes pursuant to the passage and enactment of AB 458. Accordingly, NCLR encourages the Department to pursue the promulgation of additional regulations regarding the responsibilities of caregivers, training requirements for foster parents and other caregivers, and license approvals, denials, and revocations.

Response:

This regulation package addresses the personal rights provisions of AB 458 and SB 1639. The training requirement provisions of AB 458, affecting group home administrators, foster parents, relative caregivers, and licensing personnel will be addressed in another regulation package. The Department agrees with your proposed changes and will incorporate them in a future regulation package. No change to the regulations will be made at this time based on your comment. Thank you for your comment.

5. Comment:

(I) Caregiver Responsibilities:

It is the policy of the state that all children in foster care have the right to fair and equal treatment, and to not be subjected to discrimination or harassment. In order to ensure that providers do not unwittingly violate these rights or allow others to do so, it is important that providers are given guidance and direction as to the scope and application of these rights when working with foster children who are vulnerable to harassment and abuse at the hands of other foster children. Therefore, licensees need to understand that they have a legal responsibility to ensure that a foster child's right not to be harassed or discriminated against is not violated by other children or adults in the home. Existing regulations that provide guidance on duties and responsibilities should be amended to ensure that caregivers understand that the law requires that they protect foster children from harassment, violence, and intimidation at the hands of other children and adults in the home. (See discussion in 8/17/5 letter regarding proposed changes to §83064 and 84065.2.)

Response:

Please refer to the response to comment number 4. Thank you for your comment.

6. Comment:

(2) Training:

AB 458 mandates initial and ongoing training for all group home administrators, foster parents, and department licensing personnel that covers the rights of foster children to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

Existing regulations define the components of the Initial Certification Training Program for group home administrators. The regulations layout the number of curriculum hours required on each of the areas that make up the uniform Core of Knowledge. These regulations do not include the training that is now required under §1522.41 of the Health and safety Code (c)(1)(H) as amended by AB 458. As stated in §1522.41(3) of the Code, failure to comply with the requirements of this section are grounds for revocation of the license of the group home facility. Therefore, §84090 of the regulations should be amended to ensure that group home administrators receive the minimum training under the law. Existing regulations define the training for foster parents that is required prior to placement and annually in order to maintain their license. These regulations refer to the requirements of §1529.2 of the Health and Safety Code and incorporate the language of the section in the Handbook. The language of §1529.2 that is included does not reflect the amendment to that section by the enactment of AB 458. Therefore, §89405 of the regulations should be amended to ensure that foster parents receive the minimum training required under the law.

In addition, any regulations that address training requirements for community care licensing personnel should also be amended to reflect the current language of Health and Safety Code §1563(c)(5).

Response:

Please refer to the response to comment number 4. Thank you for your comment.

7. Comment:

(3) Licensing approvals:

California law provides that all persons engaged in providing care and services to foster children are to have fair and equal access to all available programs, benefits, services, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their client's or their own actual or perceived characteristics as specified under AB 458. This includes foster parents, adoptive parents, relative caregivers, and other caregivers contracting with county welfare departments. The regulations that address the licensing process for foster parents, adoptive parents, relative caregivers, and other caregivers should be amended to reflect this policy. (See discussion in 8/17/5 letter regarding proposed changes to §89317 and 80017.)

Response:

Please refer to the response to comment number 4 and the response to comment number 33 from the 45-day comment period. Thank you for your comment.

8. Comment:

(4) License denial or revocation:

In addition, in order to ensure that the personal rights of foster children are not violated by facilities and programs that fail to fulfill their legal responsibilities under AB 458, an amendment to existing regulations should be made in order to clarify to Department personnel that they may deny or revoke a group home administrator's certification or a foster family agency license if the certificate holder or licensee violates the personal rights of a foster child as guaranteed under AB 458. (See discussion in 8/17/05 letter regarding proposed changes to §84064.4.)

In a similar vein, regulations regarding serious deficiencies in small family homes and group homes should be amended to include violations of the personal rights of foster children. (See discussion in 8/17/05 letter regarding proposed changes to §§83051 and 84051.)

Response:

The Department is concerned about any violation of any licensing laws and regulations, including a child's personal rights and has enforcement and administrative actions currently in place to address issues regarding licensees who commit violations. These administrative remedies include any violation of the right accorded to children by AB 458.

- i) Pursuant to Government Code Section 11346.8, a second 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoted for public comment from November 7, 2006 to November 22, 2006 was received from the following:

Jody Marksamer, Equal Justice Works Fellow, National Center for Lesbian Rights (NCLR), submitted a letter in support of the changes to Foster Youth Personal Rights proposed regulations. The comment received and the Department's response to that comment follows:

1. Comment:

Thank you very much for the previous opportunities to provide the comments regarding the Department's proposed regulatory action on foster youth personal rights.

I am happy to see that many of the comments we submitted during the two prior public comment periods were included in the Changes to Regulations issued by the Department

on November 7, 2006. While we support these proposed regulations, we again encourage the Department to promulgate amendments to the regulations that address the remaining statutory requirements of AB 458 as recommended in our August 17, 2005 and June 12, 2006 comment letters. I am available to work with the Department to assist the development of future regulatory changes related to the provisions of AB 458.

Thank you once again for adopting many of our comments regarding the proposed regulatory action on Foster Youth Personal Rights. I look forward to the final adoption of these regulations and I am hopeful that these regulations will improve understanding of the personal rights of foster youth in California. Any questions regarding this comment letter can be directed to me, Jody Marksamer, at 415-365-1308.

Response:

The Department agrees with your recommendation to update the regulations regarding the rights of foster youth. Training and licensing procedures to reflect the requirements pursuant to the passage and enactment of AB 458 affecting group home administrators, foster parents, relative caregivers, and licensing personnel will be incorporated in a future regulation package. No further changes to these proposed regulations will be made at this time. Thank you for your comment.