
POLICY TRANSMITTAL NO. 05-20	DATE: MAY 24, 2005
OFFICE OF CLIENT ADVOCACY	DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-3, Table of Contents; 340:2-3-2; 2-3-26; 2-3-32; 2-3-34 through 2-3-38; 2-3-45 through 2-3-46; 2-3-50; 2-3-62 through 2-3-63; and 2-3-71 through 2-3-2-3-72.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

OAC 340:2-3-2 revisions make stylistic and semantic improvements.

OAC 340:2-3-26 is a new Section describing Office of Client Advocacy (OCA) customer complaint process.

OAC 340:2-3-32 revisions clarify the type of information disclosed to guardians.

OAC 340:2-3-34 revisions add theft of medications that are controlled substances to the definition of criminal activity.

OAC 340:2-3-35 revisions clarify when the local grievance coordinator (LGC) is contacted in the "refer for grievance" process.

OAC 340:2-3-36 revisions change the terminology from "exit conference" to "exit notice" and clarify the process for notifying an OKDHS employee of an OCA investigative finding.

OAC 340:2-3-37 and 340:2-3-50 revisions add references to new OKDHS forms.

OAC 340:2-3-38 revisions clarify time frames for foster parent grievances, change terminology from "exit conference" to "exit notice," and correct typographical errors in rule citation references.

OAC 340:2-3-45 revisions clarify LGC responsibilities, and refer to online training.

OAC 340:2-3-46 revisions correct typographical errors in rule citation references.

OAC 340:2-3-62 revisions clarify that supporting documentation is

included with Grievance and Abuse Review Committee (GARC) requests for review.

OAC 340:2-3-63 revisions add words inadvertently omitted that are necessary to understand the rule.

OAC 340:2-3-71 and 340:2-3-72 revisions refer to "maltreatment" in place of "mistreatment."

Original signed on 5-2-05

Joanne Verity, Co-Interim Advocate General
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WF # 04-33 (DT)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS as the rulemaking agency; the “2” specifies the Chapter number; and the “1” specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, DHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, DHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at (405) 521-3611.

REMOVE

INSERT

340:2-3, Table of Contents

340:2-3, Table of Contents, pages 1-3,
revised 5-26-05

340:2-3-2

340:2-3-2, pages 1-15, revised 5-26-05

340:2-3-26, 1 page only, issued 5-26-05

340:2-3-32

340:2-3-32, pages 1-5, revised 5-26-05

340:2-3-34

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340:2-3-35, pages 1-4, revised 5-26-05

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340:2-3-36, pages 1-16, revised 5-26-05

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340:2-3-62, pages 1-4, revised 5-26-05

340:2-3-63

340:2-3-63, pages 1-2, revised 5-26-05

340:2-3-71

340:2-3-71, pages 1-17, revised 5-26-05

REMOVE

340:2-3-72

INSERT

340:2-3-72, pages 1-3, revised 5-26-05

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY**PART 1. ADMINISTRATION**

Section

- 340:2-3-1. Purpose
- 340:2-3-2. Definitions
- 340:2-3-3. Legal basis and authority **[REVOKED]**
- 340:2-3-4. Scope of rules **[REVOKED]**
- 340:2-3-5. Child abuse, neglect or mistreatment shall not include **[REVOKED]**
- 340:2-3-6. Procedure for reporting incidents of abuse, neglect or mistreatment **[REVOKED]**
- 340:2-3-7. Ensuring client safety **[REVOKED]**
- 340:2-3-8. Office of Advocate Defender **[REVOKED]**
- 340:2-3-9. Procedure for investigation **[REVOKED]**
- 340:2-3-10. Review of investigative reports **[REVOKED]**
- 340:2-3-11. Role of the Grievance and Abuse Review Committee **[REVOKED]**
- 340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees
- 340:2-3-13. Grievance and abuse review committee **[REVOKED]**
- 340:2-3-14. Grievance rules **[REVOKED]**
- 340:2-3-15. Resolving the Grievance **[REVOKED]**
- 340:2-3-16. Grievance logs, files and reports **[REVOKED]**
- 340:2-3-17. Monitoring and evaluation **[REVOKED]**
- 340:2-3-18. Group homes **[REVOKED]**
- 340:2-3-19. Community based programs **[REVOKED]**
- 340:2-3-20. Appeals procedures - State Office **[REVOKED]**
- 340:2-3-21. Grievance rules, guidelines and procedures for Department operated facilities and community based services for the mentally retarded and developmentally disabled **[REVOKED]**
- 340:2-3-22. Grievance rules, guidelines and procedures for private group homes for the mentally retarded and developmentally disabled **[REVOKED]**
- 340:2-3-23. Rules, guidelines and procedures for investigating allegations of abuse, neglect and exploitation of Hissom class members who reside in the community **[REVOKED]**
- 340:2-3-24. Grievance policy and procedure for clients receiving services from the Department of Human Services **[REVOKED]**
- 340:2-3-25. Investigation of foster parent complaints of retaliation, harassment, or discrimination by an employee of the Department or child placing agency **[REVOKED]**
- 340:2-3-26. Customer complaint process

PART 3. INVESTIGATIONS

- 340:2-3-32. Office of Client Advocacy (OCA) investigation protocols
- 340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation
- 340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)
- 340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)
- 340:2-3-36. Investigation procedures
- 340:2-3-37. Caretaker conduct review (CCR)
- 340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination

PART 5. GRIEVANCES

- 340:2-3-45. Grievance system protocols
- 340:2-3-46. Contested grievances appealed to the state office
- 340:2-3-47. Grievances of minors in OKDHS custody living in private residential facilities
- 340:2-3-48. Grievances of minors in DHS operated shelters and group homes
- 340:2-3-49. Grievances of minors in OKDHS custody and youth in voluntary care living in other residential settings
- 340:2-3-50. Grievances of foster parents
- 340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (GREER)
- 340:2-3-52. Grievances of Hissom class members
- 340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services Division (DDSD)
- 340:2-3-54. Grievances of residents of private group homes for individuals with developmental disabilities
- 340:2-3-55. Grievances of OKDHS clients not covered by another grievance system

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

- 340:2-3-61. Grievance and Abuse Review Committee (GARC)
- 340:2-3-62. Grievance and Abuse Review committee (GARC) review of Office of Client Advocacy (OCA) investigation reports
- 340:2-3-63. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports regarding foster parent complaints
- 340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

- 340:2-3-65. Grievance and Abuse Review Committee (GARC) review of care and treatment of clients

PART 9. OMBUDSMAN PROGRAMS

- 340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general
- 340:2-3-72. Advocacy services for residents of Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)
- 340:2-3-73. Advocacy services for former residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)
- 340:2-3-74. Advocacy services for Hissom class members
- 340:2-3-75. Advocacy services for clients with a special advocacy need

340:2-3-2. Definitions

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Abuse" means, with regard to:

(A) minors and youth, the causing or permitting harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or

(B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes. ■ 1

"Administrator," including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

(A) minors in Oklahoma Department of Human Services (OKDHS) custody living in a private residential facility, the chief administrative officer of the facility;

(B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;

(C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;

(D) foster parents, the applicable OKDHS county director or area director, as appropriate;

(E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs, the person charged with responsibility for administering the program;

(G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;

(H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" or "APS" means the Adult Protective Services Unit of OKDHS.

"Advocate," also known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"Advocate general" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is *OCA.advocategeneral@okdhs.org.

"Authorized use of physical force" by a caretaker of minors and youths residing outside their homes, other than minors and youth in foster care:

(A) means the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:

(i) pose a risk of inflicting harm to self or others; or

(ii) be in the process of leaving a facility without authorization.

(B) When the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into

consideration, including:

- (i) the grounds for belief that force was necessary;
- (ii) the age, gender, and strength of the parties involved;
- (iii) the nature of the force employed;
- (iv) the availability of alternative means of force or control; and
- (v) the extent of the harm inflicted.

"Caretaker" means, with regard to:

(A) minors and youth, an agent or employee of:

- (i) a public or private residential home, institution, or facility above the level of foster family care; or
- (ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and

(B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes. ■ 2

"Caretaker misconduct":

(A) means an act or omission that:

- (i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
- (ii) is not found to be abuse or neglect; and
- (iii) results in or creates the risk of harm to a minor or vulnerable adult.

(B) includes, but is not limited to:

- (i) acts or omissions that contribute to the delinquency of a minor;
- (ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(iii) unintentionally causing mental anguish;

(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; and

(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by DDS who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child placing agency" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Client" means, with regard to:

(A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"Community services worker" or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"Community Services Worker Registry" or **"CSW Registry"** means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive

services, psychiatric, or psychological treatment.

"**DDSD**" means the Developmental Disabilities Services Division of OKDHS.

"**DHS**" or "**Department**" or "**OKDHS**" means the Oklahoma Department of Human Services.

"**Disposition**," with regard to OCA's intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

"**DMHSAS**" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"**DRS**" means the Oklahoma Department of Rehabilitation Services.

"**E-mail**" means:

(A) with regard to the advocate general, an e-mail sent to *oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an e-mail sent to *oca.grievances@okdhs.org;

(C) with regard to OCA investigation matters, an e-mail sent to *oca.investigations@okdhs.org; and

(D) with regard to OCA intake matters, *oca.intake@okdhs.org.

"**Emergency**" means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"**Excessive use of force**" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

(A) the grounds for belief that force was necessary;

(B) the age, gender, and strength of the parties involved;

(C) the nature of the force employed;

- (D) the availability of alternative means of force or control;
- (E) the extent of the harm inflicted; and
- (F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"Exploitation" or **"exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes. ■ 3

"Facility" means:

- (A) a public or private agency, corporation, partnership, or other entity which:
 - (i) operates a residential child care center; or
 - (ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;
- (B) an OKDHS operated shelter;
- (C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for minors;
- (H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or
- (I) SORC, NORCE, and Greer.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for a child in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to a foster child.

"GARC" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"Guardian" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or **"GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" includes but is not limited to:

- (A) non-accidental physical injury or mental anguish; ■ 4
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) failure to provide protection from harm or threatened harm;
- (E) the unauthorized use of force; or
- (F) the use of excessive force.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, et al. vs. The Hissom Memorial Center, et al., Case No. 85-C-437-E.

"Hotline" means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"ICF/MR" or **"Intermediate Care Facility for the Mentally Retarded,"** also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

(A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

"Indecent exposure" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes. ■ 5

"In-home supports" and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDSD, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430 of the Oklahoma Statutes.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, burn, or fracture), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, ■ 6 with regard to:

(A) minors and youth, the failure of a caretaker to provide:

(i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or

(ii) special care made necessary by the physical or mental condition of the minor or youth; ■ 7 or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes. ■ 8

"OCA" means the Office of Client Advocacy of OKDHS.

"OCA intake" means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" or **"ombuds,"** means "advocate" as defined in this subsection.

"Personal support team" or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Preponderance of the evidence" means information or evidence that is of a

greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

"Problem resolution" means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

"Residential child care center" means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"Self-neglect" means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes. ■ 9

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that are unlikely to be the result of normal daily living activities.

"Sexual abuse" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes. ■ 10

"Sexual exploitation" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes. ■ 11

"Specialized foster care" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDS, is monitored by DDS, and is funded through the Home and Community-Based Waiver Services Program administered by DDS.

"State office" means the administrative offices of OKDHS in Oklahoma City.

"State office administrator," including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;

(C) DDS clients, the director of DDS; and

(D) other OKDHS clients, the appropriate chief officer or division director.

"Subpoena" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

"Suspicious injury" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living; ■ 4

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, which are unlikely to be the result of normal daily living activities.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment. ■ 12

"Unauthorized use of force" means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

"Unexplained injury" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"Verbal abuse" means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes. ■ 13

"Vulnerable adult" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes. ■ 14

"Ward" means a person over whom a guardianship has been given by the court.

"Youth" means, with regard to:

(A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

INSTRUCTIONS TO STAFF

1. The definition of abuse in Section 10-103(8) of Title 43A of the Oklahoma Statutes is: ***"Abuse" means causing or permitting: a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.***
2. The definition of caretaker in Section 10-103(6) of Title 43A of the Oklahoma Statutes is: ***"Caretaker" is a person who has: a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship; b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.***
3. The definition of exploitation or exploit in Section 10-103(9) of Title 43A of the Oklahoma Statutes is: ***"Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.***
4. **"Accident"** means an event that could not be anticipated or prevented through the exercise of reasonable care.

5. The definition of indecent exposure in Section 10-103(12) of Title 43A of the Oklahoma Statutes is: *"Indecent exposure" means forcing or requiring a vulnerable adult to: a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or b. touch or feel the body or private parts of another.*
6. Neglect can result from lack of supervision appropriate under the circumstances and failure to report client maltreatment pursuant to OAC 340:2-3-33.
7. Neglect includes, but is not limited to, use of a restraint under circumstances that the person(s) involved in executing the restraint knew or should have known that:
 - (1) the restraint was not an authorized use of physical force;
 - (2) the type of restraint used is not an approved method;
 - (3) the physical surroundings where the restraint was executed would result in a risk of serious injury; or
 - (4) the amount of force used was excessive.
8. The definition of neglect in Section 10-103(10) of Title 43A of the Oklahoma Statutes is: *"Neglect" means: a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest, b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services. It may include neglect of a client's financial interests due to a breach of a fiduciary relationship.*
9. The definition of self-neglect in Section 10-103(13) of Title 43A of the Oklahoma Statutes is: *"Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity.*
10. The definition of sexual abuse in Section 10-103(11) of Title 43A of the

Oklahoma Statutes is: ***"Sexual abuse" means: a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object; b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.***

11. The definition of sexual exploitation in Section 10-103(14) of Title 43A of the Oklahoma Statutes is: ***"Sexual exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law.***
12. In making that assessment, consideration is given to the credibility of the source of information as well as the information provided. "He fell in the shower" may be an excuse for abuse. "She tripped on her shoe laces" may be an excuse for lack of supervision. In making a determination whether an injury is suspicious, a nurse's assessment that an injury is not suspicious is only one factor considered but is not conclusive.
13. The definition of verbal abuse in Section 10-103(15) of Title 43A of the Oklahoma Statutes is: ***"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.***
14. The definition of vulnerable adult in Section 10-103(5) of Title 43A of the Oklahoma Statutes is: ***"Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.***

340:2-3-26. Customer complaint process

(a) Purpose and scope. This customer complaint process provides Office of Client Advocacy (OCA) customers an opportunity to raise concerns about the services they receive from OCA and to request a review from the advocate general or designee. This process is available to OCA customers and clients, client relatives and associates, employees of other Oklahoma Department of Human Services (OKDHS) divisions, providers, and any other customer of OCA.

(b) Procedure.

(1) Any customer who is dissatisfied with or has a concern about OCA services, practices or procedures, or who considers the action or inaction of an OCA employee to be improper or discourteous, submits to the advocate general a written complaint detailing their concerns. The complaint is sent either electronically to OCA.advocategeneral@okdhs.org or by regular mail to Office of Client Advocacy, P.O. Box 25352, Oklahoma City, OK. 73125.

(2) The advocate general or designee reviews the complaint and informs the complainant of the results of the review within 20 business days after receipt of the complaint.

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

(a) Legal authority, scope, and purpose.

(1) Legal authority.

(A) Section 7004-3.4(A)(2)(d) of Title 10 of the Oklahoma Statutes gives OCA the responsibility to investigate allegations of caretaker abuse and neglect of minors in the State of Oklahoma:

(i) residing outside their own homes regardless of custody, other than minors in foster care;

(ii) minors who are Developmental Disabilities Services Division (DDSD) service recipients receiving in-home supports, as defined in OAC 340:2-3-2; and

(iii) in a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes. ■ 1

(B) Section 7306-2.11 of Title 10 of the Oklahoma Statutes accords youthful offenders in the Office of Juvenile Affairs (OJA) custody the same rights and services available to minors in OJA custody. This includes maltreatment investigations conducted by OCA in facilities operated by or contracting with OJA. OCA also conducts maltreatment investigations involving youths in those facilities when the juvenile court has extended its jurisdiction and OJA custody until the youth reaches age 19.

(C) Section 10-105 of Title 43A of the Oklahoma Statutes gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve Hissom class members and residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), OKDHS operated facilities for persons with developmental disabilities.

(D) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts administrative investigations of allegations of caretaker maltreatment listed in this subsection. All of the individuals listed, who are clients of the facilities and providers which provide them residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:

(A) abuse and neglect of minors, and caretaker misconduct with regard to minors, in residential care above the level of foster care regardless of custody, including but not limited to:

(i) minors in OKDHS operated or licensed shelters and group homes;

(ii) minors and youth in facilities operated by, licensed by, or contracting with OJA;

(iii) minors in community-based youth services shelters and community intervention centers which contract with OJA pursuant to Section 7302-3.5 of Title 10 of the Oklahoma Statutes;

(iv) minors in facilities operated by or contracting with Department of Mental Health and Substance Abuse Services (DMHSAS);

(v) minors in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) minors residing in facilities operated by the Department of Rehabilitation Services (DRS): the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) minors receiving services from a community services worker as that term is defined in Section 1025.1 of Title 56 of the Oklahoma Statutes; ■ 1

(B) abuse and neglect of, and caretaker misconduct with regard to, minors in day treatment programs as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, including sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program;

(C) abuse, neglect, and verbal abuse of, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members who live in Oklahoma and who do not reside in a private intermediate care facility for the mentally retarded (ICF/MR); and ■ 2

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker or a Medicaid personal care assistant, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, on request of the Adult Protective Services Unit of OKDHS.

(3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by caretakers in order to:

- (A) protect clients from further maltreatment;
- (B) deter and prevent maltreatment;
- (C) provide relevant evidence in administrative and judicial proceedings;
- (D) rule out unfounded allegations; and
- (E) hold violators accountable.

(b) **Confidentiality.** State and federal statutes and regulations, including but not limited to, Section 7005-1.1 et seq. of Title 10 of the Oklahoma Statutes, Section 183 of Title 56 of the Oklahoma Statutes, and OAC 340:65-1-2, require confidentiality for many OKDHS records. Information about clients is confidential and is protected from unauthorized use. Only authorized individuals are given access to case records or provided information from those records. ■ 3

(1) **OCA investigations involving minors and youth.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving minors and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) Sections 7307-1.2 through 1.5 of Title 10 of the Oklahoma Statutes apply to OCA investigations involving minors and youth in OJA custody and in facilities that contract with OJA.

(B) Sections 7005-1.2 et seq., 7107, 7108, and 7109 of Title 10 of the Oklahoma Statutes apply to investigations involving minors, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 46 apply to OCA investigations involving minors in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA's files, records, and reports relating to investigations involving vulnerable adults, include but are not limited to (A) through (C) of this paragraph.

(A) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

(i) a district attorney or employees of the district attorney's office;

(ii) the attorney representing an alleged victim in the matter under investigation;

(iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;

(iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;

(v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;

(vi) the provider for a vulnerable adult; and

(vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) In other situations, OCA investigative information is considered confidential under Section 10-110(A) of Title 43A of the Oklahoma Statutes and may be

disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs manager for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

INSTRUCTIONS TO STAFF

1. Specialized community homes (SCH) are considered to be foster homes for purposes of Title 10 of the Oklahoma Statutes abuse and neglect investigations. Therefore, allegations involving SCH are referred to Child Protective Services.

2. Allegations of self-neglect are referred to and handled by the Oklahoma Department of Human Services (OKDHS) Adult Protective Services Unit.

3. (a) Staff responsibilities. Office of Client Advocacy (OCA) staff are familiar with relevant OKDHS policies, including but not limited to OAC 340:2-3-1 et seq., 340:75-1-42 through 45, 340:5-1-5 through 340:5-7-6, and 340:100-3-2. All staff members are responsible for ensuring case information, whether recorded or unrecorded, is treated in a professional manner consistent with OKDHS policy. Failure to comply with OKDHS policies, and state and federal laws regarding confidentiality, including the Health Insurance Portability and Accountability Act (HIPAA) and The Privacy Rule, may result in criminal and administrative sanctions.

(b) Computer data. Client and case record data stored in computer systems and available through computer screens, reports, and other printouts is confidential and is protected in the same manner as other confidential information. Passwords and sign-on codes are confidential and are not exchanged among staff or routinely posted. Terminals are not left unattended and confidential information is not left showing on a screen in view of unauthorized persons.

(c) Subpoenas. A state court subpoena or subpoena duces tecum purporting to compel disclosure of OCA records is not valid per Section 7005-1.2(C) of Title 10 of the Oklahoma Statutes. When a petition, motion, subpoena, subpoena duces tecum, or any other request or application for release of an OKDHS record is received by an OCA employee, the employee immediately notifies the OCA programs administrator for investigations and the advocate general.

340:2-3-34. Administrator's responsibilities regarding allegations reportable to Office of Client Advocacy (OCA)

(a) **Immediate protection for safety, health, and welfare.** If OCA intake receives an allegation of caretaker maltreatment involving an OCA client from anyone other than the administrator, or the administrator's designee, of the facility or provider responsible for the client, OCA intake promptly notifies the applicable administrator of the allegation.

(1) Upon becoming aware of an allegation of caretaker maltreatment involving an OCA client, an administrator ensures the safety, protection, and needed medical attention of any client named in the allegation and other clients receiving services from the facility or provider.

(2) When criminal activity is alleged, other than caretaker abuse or neglect unless it involves a serious physical injury, the administrator immediately notifies the appropriate local law enforcement authority. The types of criminal activity which are reported to law enforcement include, but are not limited to, the use or possession of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, property, or medicine that is a controlled substance, and when someone other than a caretaker is believed to have committed the allegation.

(3) The administrator takes necessary personnel actions to ensure the protection and safety of the alleged victim(s) and other clients. OCA does not determine or approve personnel actions taken by an administrator in response to allegations reported to OCA.

(4) In the event of alleged abuse or neglect of a Hissom class member by a provider's employee or subcontractor, the administrator ensures the protection and medical attention for any class member named in an allegation or other individual served. In the event of alleged abuse or neglect by an individual serving as a provider, it is the responsibility of the class member's case manager to ensure protection, medical attention, or both for the class member. OCA intake notifies the applicable Developmental Disabilities Services Division (DDSD) area manager by e-mail within one working day of receipt of a referral of abuse or neglect by an individual serving as provider for the class member. ■ 1

(b) **Preliminary assessment.** Upon learning of an incident reportable to OCA, the administrator:

(1) immediately ensures the safety of any client named in the referral and of other clients;

(2) secures any physical evidence and gathers documents within the possession of the facility or provider, custody, or control that may be relevant to the allegation;

(3) immediately takes photographs of any injuries. Photographs are taken by someone who was not involved in the incident that is the subject of the allegation relating to the injuries; and

(4) coordinates activities with OCA and any other agency or law enforcement authority involved in investigating the referral.

(c) **Collecting pertinent reports and documents.** The administrator determines which employees were present when the alleged incident occurred and requires each employee to submit a written account of the alleged incident. The administrator collects medical records, other documents and reports which pertain to the alleged incident, written statements, and other documentary evidence within the possession of the facility or provider, custody, or control and places them in a holding file for investigative use by OCA and any other investigative authority. The administrator securely maintains any documents collected during the preliminary assessment.

(d) **OCA access to documents and evidence.** Upon request, an OCA investigator is provided a copy of and access to the original of written statements, incident reports, relevant documents and records, and other reports, photos, and other evidence collected during the preliminary assessment.

(e) **Prohibition from interviewing during preliminary assessment.** Employees of the facility or provider do not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. To avoid the consequences of over-interviewing parties involved in an alleged incident, the preliminary assessment is limited to inquiries about who was involved, obtaining written statements, and clarifying information needed to take appropriate action to ensure client safety. Determining if a staff member engaged in maltreatment is not the goal of a preliminary assessment and is avoided until the OCA disposition is determined. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal activity. OCA coordinates activities with local, state, and federal law enforcement entities to seek the most appropriate investigative response to the referral.

(f) **Facility and provider contact person.** Each administrator of a facility or provider responsible for the care of any of the individuals listed in OAC 340:2-3-32(a)(2) designates a contact person to receive the notice described in subsection (a) of this Section. The administrator informs the advocate general of the name, phone number, and e-mail address of the designated contact person, and immediately notifies the

advocate general in writing, by mail or e-mail, of any changes in this information. The designated contact person is reasonably available by telephone, pager, or e-mail between 8:00 a.m. and 5:00 p.m. weekdays, except holidays. Form OCA-INV-2, Designation of Contact Person for Client Maltreatment Investigations, may be used for this purpose.

(g) **Documentation provided by SORC, NORCE, and Greer.** Within one business day of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer) submitting to the Oklahoma State Department of Health (OSDH) an incident report, a five-day report or a final report regarding an allegation reported to OCA intake, the facility sends to OCA intake a copy by fax or e-mail attachment.

(h) **Ensuring confidentiality.** Administrators maintain information, files, and documents regarding referrals made to OCA intake, including OCA investigation reports distributed pursuant to OAC 340:2-3-36, in a manner that protects the confidentiality of information contained in them.

INSTRUCTIONS TO STAFF

- 1. In addition to the applicable Developmental Disabilities Services Division (DDSD) area manager, the Office of Client Advocacy (OCA) intake notifies one other person designated by that area manager. The area manager or designee notifies the case manager assigned to any Hissom class member named as an alleged victim.**

340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)

(a) **Disposition options.** OCA intake records on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, the specifics of each referral received and makes an appropriate disposition regarding how the referral is to be handled. Consideration is given to all known information to determine an appropriate disposition and course of action. The disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **OCA investigation.** This disposition means OCA opens an investigation of an allegation of caretaker maltreatment. ■ 1

(2) **Assign for caretaker conduct review.** This disposition means the facility named in the referral is given responsibility to conduct an internal caretaker conduct review in accordance with OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. OCA intake documents the notification on Form OCA-1, or its electronic equivalent. This disposition does not apply to allegations involving Developmental Disabilities Services Division (DDSD) clients other than residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer).

(3) **Refer to advocate.** This disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE or Greer, and involves a concern which, based on the information provided, does not rise to the level of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by e-mail or telephone for appropriate follow-up inquiry. If the advocate knows or learns of facts which indicate a more appropriate disposition, the advocate immediately notifies OCA intake. ■ 1 & 2

(4) **Refer to another administrative entity for handling.** This disposition means OCA intake forwards the information to another state agency or OKDHS division or office for handling. This disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the purview of OCA, but rather involves complaints about employee performance or allegations within the scope of another administrative entity. When this disposition is made, OCA intake makes the referral within one working day of receipt of the reported incident. These referrals are not assigned to OCA investigators for handling or intervention. ■ 3

(5) **Refer to law enforcement.** This disposition is used when the referral involves

possible criminal activity and it is not within OCA's investigative authority as described in OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency also is investigating the matter.

(6) **Refer for grievance.** When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form OCA-1, or its electronic equivalent. The referral is directed to the appropriate entity for handling as a grievance when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. If the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. Indicators that a referral is appropriate for handling as a grievance include complaints about:

(A) conditions which do not endanger residents;

(B) staff improprieties which do not constitute abuse, neglect, verbal abuse, caretaker misconduct, or exploitation; and

(C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another disposition.

(8) **Refer to administration.** This disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency but is relevant to the operations of a facility or provider. When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral. ■ 4

(b) **Notifying law enforcement.** If a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker, OCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents that information on Form OCA-1, or its electronic equivalent. If law enforcement has not been called or it is unclear if the matter has been reported to law enforcement, OCA intake requests the contact person at the facility or provider to notify law enforcement immediately. If acceptable assurances are not given that law enforcement has been or will be notified by the end of the business day, OCA intake

notifies the appropriate law enforcement authority and notes the specifics on Form OCA-1, or its electronic equivalent. ■ 5

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. ■ 6 Investigations involving Hissom class members are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately. ■ 7

INSTRUCTIONS TO STAFF

- 1. Hissom referrals.** The only dispositions used for referrals regarding a Hissom class member are "Office of Client Advocacy (OCA) investigation" and "refer to advocate." When appropriate, intake also refers to law enforcement and to the Oklahoma Department of Human Services (OKDHS) Adult Protective Services (APS) Unit. Regardless the disposition given to a referral involving a Hissom class member, OCA intake notifies the OCA advocate assigned to the class member by e-mail copied to the advocate's supervisor and the OCA programs administrator for community ombuds programs. OCA intake promptly notifies these same individuals whenever there is a change in the disposition. OCA intake also notifies by e-mail the appropriate Developmental Disabilities Services Division (DDSD) area manager and other persons designated in OCA directives. If the disposition subsequently changes, OCA intake notifies the same individuals in writing of the change.
- 2. Identifying emergency situations.** OCA intake determines from available information whether the situation presents a serious risk to the victim that requires immediate attention. If an emergency response appears to be indicated, OCA arranges for an OCA investigator, an APS investigator, a law enforcement officer, or other appropriate person, such as an OCA advocate, to personally visit with the victim immediately and no later than within 24 hours. Emergency situations are those in which a person is likely to suffer death or serious physical harm without intervention.
- 3. Violations of OAC 340:100-3-4.1(d)** are referred to the Quality Assurance unit of the OKDHS Developmental Disabilities Services Division as warranted.
- 4. When a referral from SORC, NORCE or Greer is given a "refer to administration" disposition,** the facility sends OCA a copy of the incident reports, five-day reports, and final reports sent to the Oklahoma State Department of Health (OSDH) within one business day of submission of the

report to the OSDH.

5. **Criminal activity.** The types of criminal activity which are reported to law enforcement include, but are not limited to, illegal drug use or possession, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money, property or medicine that is a controlled substance, and when someone other than a caretaker is involved in the allegation. When a reporting party indicates that law enforcement has been contacted, OCA intake documents on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, the particulars regarding what law enforcement agency was contacted, the date and time it was contacted, and with whom the reporting party spoke.
6. In making assignments, consideration is given to the status of the investigators' workloads, efficient use of travel resources, planned and unplanned absences of investigators, and investigator areas of expertise.
7. Following the assignment of a referral, the name of the investigator to whom a referral has been assigned is noted on Form OCA-1, or its electronic equivalent.

340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form OCA-4, Rights and Responsibilities of Accused OKDHS Employees, Form OCA-4-A, Rights and Responsibilities of Accused Caretakers, or a substantially similar form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator or designee promptly completes Form DDS-59, Rights and Responsibilities of Accused Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2)(C). The administrator or designee mails Form DDS-59 to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who

contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding, provided the person did not perpetrate or inflict the abuse or neglect at issue.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

(A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the referral;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling of interviews;

(C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(f) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.

(g) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

(A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(B) medical records;

(C) photos; ■ 1 and

(D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. ■ 2 If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. ■ 3 Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general. ■ 2

(i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. ■ 4 When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents. ■ 5

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s) and evidence learned during the investigative process. In general, the investigator discloses only the nature and substance of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant

information learned during the investigation and provided an opportunity to respond.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit notice.** Within 30 calendar days of disposition of a referral to be investigated, the assigned OCA investigator contacts in person, by e-mail, or by telephone, the applicable administrator, or the administrator's designee, when the information

gathering portion of the investigative process is completed.

(1) Except in cases involving Hissom class members or caretakers subject to the Community Services Worker (CSW) Registry, the investigator informs the administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(2) In cases involving Hissom class members or caretakers subject to the CSW Registry, the investigator informs the administrator or the OKDHS long-term care nurse, whichever is applicable, that the investigation process has concluded in accordance with OAC 340:2-3-36. When the investigation report has been approved in accordance with subsection (k) of this Section, the investigator notifies in writing the administrator or the OKDHS long-term care nurse, whichever is applicable, of areas of concern identified during the investigation.

(k) The written investigative report. After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number; ■ 6

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) in accordance with subsection (l) of this Section;

(7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter used during the investigation;

(9) an explanation of the basis for the finding(s);

(10) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; ■ 7

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section. ■ 8

(l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a preponderance of the evidence. The finding options are:

(1) **"confirmed"** means that the available evidence establishes that it is more likely than not that the alleged maltreatment occurred; ■ 9

(2) **"not confirmed"** means there was insufficient evidence to find that it is more likely than not that the alleged maltreatment occurred; or

(3) **"not confirmed/ruled out"** means the available evidence established that it is unlikely that the alleged maltreatment occurred.

(m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients. ■ 10

(n) **Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the disposition of a referral to be investigated, the OCA written investigative report is completed.

(1) Except as provided in subsection (o) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider

agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, neglect, or exploitation, a copy also is sent to the applicable district attorney.

(3) A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When an administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of OCA's report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding. If an accused caretaker is an OKDHS employee, the applicable OKDHS division director or designee is responsible for providing the employee with a letter which summarizes the allegation and states the OCA finding.

(7) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of OCA's report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report in which at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.

(o) Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry.

(1) Section 1025.2 of Title 56 of the Oklahoma Statutes requires OKDHS to establish a community services workers registry notating the final OKDHS

investigative finding of abuse, neglect, verbal abuse, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, by a community services worker or a Medicaid personal care assistant. All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.

(2) After the OCA investigation report has been finalized, an e-mail notice of the areas of concern in the report is sent to the administrator, the Developmental Disabilities Services Division (DDSD) director, the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to Section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, the DDSD director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney. ■ 11

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, the DDSD director, and the applicable district attorney. ■ 11

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator, and the DDSD director or the APS programs manager, whichever is applicable, and the assigned OKDHS long-term care nurse if applicable. ■ 11

(6) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final. ■ 12

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through 7005-1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDSO receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

(A) any personnel action taken or to be taken with regard to each accused caretaker named in the report,

(B) any corrective action taken or to be taken regarding areas of concern noted in the report, and

(C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the administrator or designee notifies the advocate general in writing:

(A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and

(B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session. ■ 13

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

INSTRUCTIONS TO STAFF

1. Photographs.

(1) The investigator:

(A) obtains a copy of each photograph and document pertinent to an investigation;

(B) clearly labels the date, time, and by whom the photographs were taken; and

(C) secures them in a separate envelope or folder labeled with the investigative case number, name(s) of victim, and any other pertinent information related to the injury.

(2) The photographs are attached to the written investigative report and the photographic evidence is referenced in the investigative report.

(3) If photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person have not been taken by the time the Office of Client Advocacy (OCA) investigator initiates the investigation, the OCA investigator takes the photographs.

2. Interviews.

(1) When the alleged victim or an essential witness is a person with a developmental disability and can contribute to the investigation, the investigator interviews that person within five working days after OCA

opens the investigation.

(2) Telephonic interviews. Interviews are conducted face-to-face with each person interviewed. An investigator obtains prior approval from the investigator's supervisor to conduct an interview by telephone. When permission to conduct a telephonic interview is granted, the telephonic interview is tape recorded and conducted in a manner to verify the identity of the person being interviewed. Absent special circumstances, each alleged victim, each accused caretaker, and each eyewitness is interviewed in person by the investigator assigned to the case. Examples of a special circumstance are: the person to be interviewed has moved to another state; the person to be interviewed adamantly refuses to be interviewed other than by telephone and a good faith effort was made unsuccessfully to overcome that resistance; and the person to be interviewed is a collateral witness who is not anticipated to possess information regarding a material issue in the case when no credibility issues are anticipated. An example of the latter is a Developmental Disabilities Services Division (DDSD) case manager interviewed to obtain routine information from the client's file.

(3) Peer interviews. The OCA investigator assigned to the case is responsible for all interviews needed to complete the investigation. An investigator may request approval from the investigator's supervisor for another OCA investigator to conduct an interview when the person to be interviewed lives over 100 miles from the assigned investigator's duty station. However, if the person to be interviewed is an alleged victim, an accused caretaker, or an eyewitness to the events, all efforts for the assigned investigator are exhausted before approval is given. When approval is given, the assigned investigator provides the assisting investigator with all relevant information to conduct an effective interview and listens to the tape recording of the interview.

(4) Attorney requests to be present during an interview. An interviewee can also arrange for the attorney to be on-call in the attorney's office during the interview; the interviewee could then call the attorney during the interview in the event there is a felt need for legal advice. An attorney's request to be present with a person being interviewed, if the attorney represents the person, can be granted if the attorney agrees the conditions listed in (A) through (H) of this Instruction.

(A) The interview takes place in an OKDHS building or some neutral location selected by the investigator, not the attorney's office.

- (B) The attorney and the person being interviewed understand the attorney does not say anything during the interview, other than request a break to consult privately with the person being interviewed or as otherwise provided in this Instruction to Staff.
- (C) The attorney does not make an opening statement or closing argument, and does not ask questions, or make any suggestions, directly or indirectly, about how the interviewee should answer a question other than indicate when the attorney is advising the interviewee to decline to answer the question based on the Fifth Amendment or a recognized privilege.
- (D) The attorney does not record the interview by audio or videotape, and may not obtain a copy of the tape recording made by the investigator except pursuant to Oklahoma laws relating to the confidentiality of OCA investigation records.
- (E) The attorney acknowledges on the record at the beginning of the interview that anything said during the interview is protected by federal and state law relating to confidentiality, and that the attorney will not violate the confidentiality of communications during the interview.
- (F) The attorney is not provided discovery in connection with the interview; in other words, the attorney will not be supplied with any information, such as documents and reports relating to the case.
- (G) The request to have an attorney present does not delay the interview absent good cause. In general, interviews take place within seven to ten days after the investigator contacts the interviewee to schedule the interview. The attorney needs to be able to accommodate the investigator's schedule.
- (H) At any time during the interview, the interviewee or the attorney can ask to be excused to consult privately.
3. **Injuries.** If the nature and circumstances of the injury create a concern for the continuing safety of a minor or vulnerable adult, the investigator promptly informs a person with authority to resolve the matter. In cases involving a Hissom class member, the investigator contacts the DDSD case manager or other DDSD staff, or the OCA advocate and other OCA staff, and remains on

the scene as indicated. In other cases, the investigator contacts the OCA programs manager for investigations or an OCA supervisor for guidance. Law enforcement is contacted when warranted.

4. **Emergency situations.** If during the course of an investigation the OCA investigator becomes aware of facts creating a concern for the continuing safety of an alleged victim, the investigator takes appropriate action warranted by the situation. In cases involving a Hissom class member or DDSD client, the investigator contacts the DDSD case manager or other DDSD staff, the OCA advocate, and other OCA staff as warranted. In other cases, the investigator contacts the OCA investigations programs manager or an OCA supervisor for guidance. The investigator contacts law enforcement when warranted. The investigator remains on the scene as needed to ensure the protection and safety of the client.
5. **Tape recordings.** In the written investigative report, the investigation clearly identifies any persons, other than the investigator and the interviewee, present in the interview, and explains their purpose for attending. During each interview, the investigator explains to the interviewee on tape that the interview is being tape recorded. Investigators include in their written report the time, date, and location of each interview conducted.
6. **If the original allegation was factually inaccurate with regard to date, time, place, or identity of individuals, the report includes the allegation as corrected or expanded as a result of the investigation.**
7. **During the course of the investigation, when the investigator becomes aware of a significant health or safety issue regarding the alleged victim, the investigator timely informs a person with the authority to resolve the matter. In cases involving Hissom class members, this can include contacting DDSD staff, the OCA advocate assigned to the class member, the advocate's supervisor, or the OCA community ombuds programs administrator.**
8. **Review of OCA investigative reports. OCA supervisors monitor timely completion of OCA investigation reports and regularly discuss with each investigator supervised referrals assigned to the investigator that are pending over 30 days. The investigator submits the written report to an OCA supervisor for review. The OCA supervisor reviews the investigative report for completeness, accuracy, appropriate analysis, proper inclusion of areas of concern, timeliness, and acceptable presentation. An investigative report approved by the investigator's supervisor is reviewed by the advocate general**

or designee.

9. If the investigator confirms abuse by an accused caretaker and the investigator knows that caretaker is a person responsible for a minor, the investigator makes a referral to Child Welfare, pursuant to Section 7103 of Title 10 of the Oklahoma Statutes, if the circumstances give cause to believe the minor may be the victim of abuse or neglect.
10. If the evidence is sufficient to confirm maltreatment but the person responsible for the maltreatment cannot be identified by a preponderance of the evidence, the confirmed finding is made on an unknown caretaker.
11. OCA also sends a copy of each final report involving a Hissom class member to all parties designated in OCA directives regarding document distribution.
12. An OCA investigative finding in a case not involving a community services worker (CSW) becomes final upon completion of review by Grievance and Abuse Review Committee (GARC) and the OKDHS Director in accordance with OAC 340:2-3-62 or when a timely request for GARC review has not been received. In cases involving a CSW, the finding is final if the investigation report does not contain a confirmed finding. In cases involving a CSW and a confirmed finding, the OCA finding is final upon completion of the review process described in OAC 340:100-3-39.
13. OCA forwards to DDSD a copy of all e-mails received. DDSD designates to OCA to whom to forward these e-mails.

340:2-3-37. Caretaker conduct review (CCR)

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) which OCA refers to a facility for an internal CCR in accordance with OAC 340:2-3-35(a)(2). This Section does not apply to allegations involving maltreatment of a Hissom class member or person receiving Developmental Disabilities Services Division (DDSD) waiver services.

(b) Assignment to a facility to conduct a CCR.

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

(A) there is no injury or evidence that the client might have been exposed to a significant risk of harm;

(B) there is a minor physical injury and it is not a suspicious injury;

(C) there is a serious physical injury and the known credible information makes it unlikely that the serious injury was the result of abuse or neglect; ■ 1 or

(D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1), at Oklahoma Department of Human Services (OKDHS) operated facilities, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the exception of tape recording the interviews in OAC 340:2-3-36(i)(1), ■ 2 including:

(1) reviewing pertinent documentation, records, and evidence collected;

(2) viewing any injuries and photos of injuries, and obtaining photos of injuries;

- (3) obtaining written statements and conducting interviews with:
 - (A) each alleged victim;
 - (B) each eyewitness;
 - (C) other persons with knowledge relevant to the allegation; and
 - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
- (6) determining the appropriate finding(s) in accordance with OAC 340:2-3-36(l).

(d) **Returning the investigation responsibility to OCA.** If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form OCA-1, Office of Client Advocacy Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation in accordance with OAC 340:2-3-35(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting CCR prepares a written report. Facilities are encouraged, but not required, to use the applicable OCA format for CCR reports, Form OCA-7, Caretaker Conduct Review Report - OKDHS Operated Facility, Form OCA-7-A, Caretaker Conduct Review Report - OJA Operated Facility, Form OCA-7-B, Caretaker Conduct Review Report – Residential Facilities. The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, in accordance

with OAC 340:2-3-36(m);

(4) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when;

(5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;

(6) an explanation of the basis for the finding(s);

(7) a summary of pertinent information obtained in interviews conducted during the review;

(8) a list of relevant documents and records reviewed;

(9) a list of attachments to the report;

(10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect; and

(11) either on a cover memo or at the end of the report, the signature and date signed by the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date that OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Review by Developmental Disabilities Services Division (DDSD) director.** Within five working days of completion of a CCR report at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility administrator or designee informs the client and the client's guardian or parent of the result of the CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or

designee notifies the advocate general in writing by e-mail or letter. The advocate general refers the matter to OCA's grievance coordinator to process for review by the DDS director as a contested grievance in accordance with OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of that review. If the grievant does not concur with the proposed resolution of the division director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62 and 340:2-3-64.

(i) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to the paragraph (h) of this Section has expired and review has not been requested, or that review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

(A) any personnel action taken or to be taken;

(B) any corrective action taken or to be taken; and

(C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

INSTRUCTIONS TO STAFF

1. Serious injuries. When an allegation involves a serious injury, there is a presumption that Office of Client Advocacy (OCA) intake assigns it for investigation by OCA. If known credible facts provide an explanation for the injury which makes it unlikely that the injury is the result of abuse, neglect, or negligent supervision, OCA intake may refer it to the facility for handling as a caretaker conduct review CCR. For example, if a client with severe osteoporosis suffers a bone fracture (a serious injury) and the treating

physician reports the fracture is more likely than not consistent with the osteoporosis, and it is not otherwise a suspicious injury, an OCA investigation is not required.

2. Interviews. Facilities are encouraged, but not required, to tape record interviews with alleged victims, accused caretakers, and eyewitnesses to incidents, and to preserve the tapes from these interviews for three years.

340:2-3-38. Investigation of foster parent complaints of retaliation and discrimination

(a) **Application.** This Section describes processes relating to allegations of retaliation and discrimination against a foster parent by an employee of the Oklahoma Department of Human Services (OKDHS) or a child placing agency. The Office of Client Advocacy (OCA) is designated by Sections 7003-3.4(D) and 7204.1 of Title 10 of the Oklahoma Statutes to conduct administrative investigations into these allegations.

(b) **Definitions.** The following words and terms when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **"Administrator,"** with regard to a child placing agency, means the chief administrative officer of the agency.

(2) **"Child placing agency"** means a private agency licensed to place children in foster family homes, group homes, adoptive homes, transitional or independent living programs, or family child care homes or other out-of-home placements, and which approves and monitors such placements and facilities in accordance with the licensing requirements established by the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 401 through 415]

(3) **"Child Welfare division"** means the OKDHS Field Operations Division (FOD) and the Children and Family Services Division (CFSD).

(4) **"Discrimination"** means knowing and willful application of a different standard to a particular foster parent which negatively affects the foster parent.

(5) **"Harassment"** means a knowing and willful course of conduct, statements, or behaviors serving no legitimate purpose directed at a foster parent that a reasonable person in the same or similar circumstances would find intimidating or substantially distressing.

(6) **"Retaliation"** means threatening a foster parent with removal of a child in the foster parent's care, harassing a foster parent, refusing or failing to place a child in a licensed or certified foster home, or disrupting a child placement in reprisal for the foster parent engaging in protected activity listed in (c)(2) of this Section.

(7) **"State office administrator"** means the FOD director, CFSD director, or both, or their designees.

(c) **Scope.** A foster parent has the right, without fear of reprisal or discrimination, to

lodge concerns and complaints with respect to the providing of foster care services. OCA initiates investigations of allegations that:

(1) an employee of OKDHS or a child placing agency has:

- (A) threatened a foster parent with removal of a child in the foster parent's care;
- (B) harassed a foster parent;
- (C) refused or failed to place a child in a licensed or approved foster home; or
- (D) disrupted a child placement; and

(2) for the purpose of retaliation or discrimination against a foster parent who has:

- (A) filed or attempted to file a grievance with OKDHS (see OAC 340:2-3-45) or with a child placing agency, whichever is applicable; ■ 1
- (B) provided information regarding foster care services to any state official or OKDHS employee; or
- (C) testified, assisted, or otherwise participated in an investigation, proceeding, or hearing against OKDHS or a child placing agency.

(d) **Exclusions.** The provisions of this Section do not apply to:

(1) a complaint by a foster parent regarding the result of a criminal, administrative, or civil proceeding for a violation by that foster parent of a law, rule, or contract provision, or an action taken by OKDHS or a child placing agency in conformity with the result of any such proceeding;

(2) allegations of acts of retaliation or discrimination that occurred more than one year prior to the date of the foster parent complaint; or

(3) allegations of a pattern of retaliation or discrimination the last incident of which occurred more than one year after the foster parent participated in protected activity.

(e) **What is reportable.** Section 7204.1 of Title 10 of the Oklahoma Statutes provides that any foster parent who has reasonable cause to believe he or she has been improperly treated by an employee of OKDHS or a child placing agency, as outlined in subsection (c) of this Section, may file a complaint with OCA. The law provides that persons making a report in good faith under this Section may not be adversely affected

solely on the basis of having made such report. The law also provides that any person who knowingly and willfully makes a false or frivolous report or complaint or a report that the person knows lacks factual foundation may be subject to loss of foster parent approval or licensure status.

(f) **Reporting procedure.** Foster parents may file complaints by contacting:

- (1) the Foster Parent Hotline, 1-800-376-9729; or
- (2) OCA's offices in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(g) **Confidentiality.** At the request of the reporter, OCA maintains confidential the identity of the reporter until the advocate general reports the results of the investigation to the Commission for Human Services (Commission) in accordance with subsection (m) of this Section. OCA maintains written records regarding the reporting source to provide information to the extent known at the time the report is received, including:

- (1) the names and addresses of the foster child and the person(s) responsible for the child's welfare;
- (2) the nature of the complaint; and
- (3) the names of the persons and agencies responsible for the allegations contained in the complaint.

(h) **Interference prohibition.**

(1) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action for misconduct under OKDHS personnel policy relating to cause for disciplinary action if the employee attempts to intimidate a witness, foster parent, or other OKDHS employee, or threatens any of them with physical or mental harm.

(2) Interference includes, but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for cooperating during an OCA investigation;
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence; and

(D) causing or influencing another person to provide false information during the investigation.

(i) **Initiation of OCA investigation.** Upon acceptance of a report of retaliation or discrimination against a foster parent, OCA assigns an investigator to investigate the allegations in accordance with this Section. OCA's investigation does not duplicate and is separate from any investigation mandated by the Oklahoma Child Abuse Reporting and Prevention Act or other investigations having formal notice or hearing requirements.

(j) **Rights and responsibilities of employees.** The rights and responsibilities of OKDHS employees in an OCA foster parent investigation are listed in (1) through (7) of this subsection.

(1) Employees make themselves available for interviews and accommodate the investigator in scheduling interviews.

(2) Employees provide pertinent information and respond fully and truthfully to questions asked.

(3) In addition to being interviewed, employees may submit written statements relating to the events in question.

(4) Employees may seek advice concerning their rights and responsibilities from other parties within or outside OKDHS.

(5) Employees prepare written statements or reports relevant to the investigation upon request.

(6) Employees, who reasonably believe answers to official inquiries regarding the events in question may incriminate them in a criminal prosecution, may decline to answer those questions.

(7) Employees interviewed do not discuss their interviews with anyone outside of OCA.

(k) **Access.** OCA at all times is granted access to any foster home which is approved, authorized, or funded by OKDHS or a child placing agency.

(l) **Investigation procedures.** Investigations are conducted in accordance with OAC 340:2-3-36 unless otherwise provided in this Subchapter.

(1) **Notifying administrators and accused caretakers.** The assigned investigator notifies the applicable administrator or state office administrator of the investigation and arranges for document production, site visits, and interviews. The administrator or state office administrator who employed any accused employee at the time of an alleged incident promptly informs the accused employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process;

(C) the employee's rights and responsibilities relating to the investigation described in subsection (j) of this Section, using Form OCA-4-B, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, a copy of which is provided to the OCA investigator; and

(D) the nature of the allegation(s) made against the employee; however, at this time the employee is not provided the details of the allegations or the substance of the evidence.

(2) **OCA access to evidence.** Applicable administrators and state office administrators facilitate and cooperate with the OCA investigation by:

(A) providing access to requested information;

(B) producing relevant documents, files, and records, accompanying the investigator on foster home visits when requested by OCA; and

(C) providing access to accused employees and others who have knowledge of relevant information.

(3) **Document review and interviews.** The OCA investigator conducts a prompt investigation in accordance with OAC 340:2-3-36(g) through (i) unless otherwise provided in this Section.

(4) **Exit notice.** The OCA investigator provides an exit notice, either electronically or by telephone, to the applicable administrator or state office administrator when the information gathering portion of the investigative process is completed. The investigator informs the administrator or state office administrator that a written report is forthcoming. Preliminary findings are not required.

(5) **The written investigation report.** After completing the information gathering portion of the investigative process, the OCA investigator prepares a written report

containing:

(A) the allegations investigated, including the date, time, and location of the alleged incidents, the date the allegation was reported to OCA, and the assigned OCA case number;

(B) a list of the involved parties, their titles and role in the matter, whether they were interviewed and, if so, when and where;

(C) the applicable definition of the type of misconduct at issue, such as discrimination, retaliation, or both;

(D) whether the foster parent engaged in an activity listed in (b)(2) in this Section and, if so, a description of the activity;

(E) the findings in accordance with OAC 340:2-3-36(l);

(F) an explanation of the basis for the finding;

(G) in cases involving a confirmed finding, a summary of relevant information obtained during each interview conducted during the investigation;

(H) any areas of concern relating to the allegations that were identified during the investigation regarding practices or procedures of OKDHS or the child placing agency;

(I) a list of relevant documents and records reviewed during the investigation; and

(J) a list of attachments to the report.

(6) Dissemination of the OCA investigative report.

(A) In cases involving allegations against an OKDHS employee, the advocate general submits a copy of the final OCA investigation report to the OKDHS Director and the state office administrators.

(B) In cases involving an employee of a child placing agency, the advocate general sends a copy of the OCA report to the administrator of the agency and the appropriate state office administrator. If the administrator of the child placing agency is the subject of the report, the report is sent to the agency's board of directors.

(C) OCA sends the foster parent and each accused OKDHS employee a letter that summarizes the allegation and states OCA's finding.

(D) All parties receiving copies of the investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 and 7107 of Title 10 and Section 10-110 of Title 43A of the Oklahoma Statutes.

(m) **OKDHS Director's request for review by the Grievance and Abuse Review Committee (GARC).** Within 20 calendar days of receipt of a final OCA investigative report, the OKDHS Director may request GARC to review the allegations and submit a report of its findings in accordance with OAC 340:2-3-63.

(n) **State office administrator's response to a confirmed finding.**

(1) When a state office administrator receives a copy of an OCA investigation report containing a finding that an OKDHS employee has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the OCA report the state office administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to the employee, and any corrective action taken or to be taken regarding areas of concern noted in the OCA report.

(2) If the OKDHS Director has referred the matter for review by GARC in accordance with subsection (l) of this Section, the state office administrator's response is due within 45 calendar days of GARC's written report to the OKDHS Director.

(3) When an administrator of a child placing agency receives a copy of an OCA investigation report containing a finding that an employee of the child placing agency has engaged in retaliation or discrimination against a foster parent, within 30 calendar days of receipt of the report the administrator notifies the advocate general in writing of any personnel action taken or to be taken with regard to each employee named in the report as having engaged in misconduct, and the status of any areas of concerns noted in the report.

(4) The advocate general reports to the Commission confirmed allegations and corrective action taken.

INSTRUCTIONS TO STAFF

1. A grievance is considered filed when a foster parent has verbally or in writing

communicated a complaint to an Oklahoma Department of Human Services (OKDHS) employee that is not resolved. [OAC 340:2-3-45(c)]

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) Legal authority, scope, and purpose.

(1) Legal authority.

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDSD.

(3) **"CFSD"** means the Children and Family Services Division of OKDHS.

(4) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(5) "**Contested grievance**" means a grievance that has not been resolved at the local level (levels one and two) and, at the request of the grievant or decisionmaker, is submitted to a higher authority for response.

(6) "**Decisionmaker**" means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDS clients who are adults, it might be a guardian or the individual support team for the client.

(7) "**Due date**" means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(8) "**E-mail**" communication with OCA or with the advocate general means an e-mail sent to the e-mail address: *oca.grievances@okdhs.org.

(9) "**Facility grievance**" means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(10) "**FOD**" means the Field Operations Division of OKDHS.

(11) "**Grievance**" is defined in subsection (c) of this Section.

(12) "**Grievant**" means a client or the person who files a grievance on behalf of a client.

(13) "**Local grievance coordinator**" or "**LGC**" means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDSD clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDSD clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDSD clients, the applicable DDSD area manager or designee.

(14) "**OCA grievance coordinator**" means the individual(s) designated by the advocate general to coordinate and monitor contested grievances.

(15) "**OKDHS grievance**" means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(16) "**Placement grievance**" means a complaint about a present or proposed placement of a minor in OKDHS custody.

(17) "**Respondent**" means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) "**Grievance**" means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance is:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee of OKDHS other than an employee in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using

Form OCA-GR-8, Notice of Summary Disposition of Grievance, OCA-GR-8-A, Notice of Summary Disposition of Grievance – DDS Clients, OCA-GR-8-B, Notice of Summary Disposition of Facility Grievance, or OCA-GR-8-C, Notice of Summary Disposition of DDS Provider Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form OCA-GR-1, Grievance Form, and then dates and signs the form. The grievance is logged on the grievance tracking log. The form used to notify the grievant along with a copy of the grievance form is sent within two business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance coordinator determines the grievance was improperly given a summary disposition, the OCA grievance coordinator informs the LGC who immediately processes the grievance. If the OCA grievance coordinator concurs with the summary disposition, the OCA grievance coordinator informs the LGC.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem which is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form OCA-GR-1 as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the

interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

- (i) implements grievance policies and procedures;
- (ii) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) functions impartially and independently in the processing of grievances;

(iv) reports directly to the administrator with regard to the LGC's grievance duties and functions;

(v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course when online training is available or substantially equivalent training that provides the LGC with a working knowledge of applicable grievance policies, forms, procedures, time frames, and the LGC's responsibilities under this Subchapter, and yearly training thereafter from OCA; and

(vi) ensures that client requests regarding how to file a grievance are responded to within two business days.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDS area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form OCA-GR-9, Grievance Poster - Child Welfare Contracted Facilities, Form OCA-GR-9-A, Grievance Poster-OKDHS County Offices, or Form OCA-GR-9-B, Grievance Poster - DDS Providers, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies and procedures, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody, OCA-GR-2-A, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form OCA-GR-3, Notice of Grievance Rights - DDS Clients (General), Form OCA-GR-3-A, Notice of Grievance Rights - Hissom Class Members, or Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The

advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

(i) any aspect of the care of a client that affects the quality of the client's life;

(ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form OCA-GR-1, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, who immediately transmits it to the LGC.

(1) LGCs obtain copies of this form from the OCA in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC coordinator or any other staff member.

(3) A grievance received on paper other than Form OCA-GR-1 is attached to a Form OCA-GR-1 filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC.

(1) The filing time and all other time periods contained in this Section are counted in business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the period is extended to the next business day.

(2) If the LGC or any respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within two business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation,

or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDSD clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form OCA-GR-5, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form OCA-GR-6, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. When no grievance activity occurred or was pending during a particular calendar quarter, the LGC can inform the advocate general of this by e-mail in lieu of submitting Form OCA-GR-6. The e-mail address is: *oca.grievances@okdhs.org.

(3) If a grievance becomes moot at any point during the processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form OCA-GR-1 and the tracking log, and sends a copy of Form OCA-GR-1 to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form OCA-GR-1, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form OCA-GR-1 is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form OCA-GR-1, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form OCA-GR-1, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form OCA-GR-1-A, Local Grievance Coordinator Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the respondent is the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable county director.

(D) If the minor also is a DDSD client, this may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form OCA-GR-1-A, attaches the corresponding Form OCA-GR-1 and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form OCA-GR-1-A by completing the second box in the first level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately proceeds to the second level of problem resolution.

(5) Within two business days of receipt of the first level response, the LGC or designee contacts the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level respondent might meet with the grievant along with the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) Second level problem resolution.

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form OCA-GR-1-A, ensures the corresponding Form OCA-GR-1 and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS county director or the DDS area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDS area manager was the first level respondent, then the second level of problem resolution is skipped and the grievance is processed as a contested grievance pursuant to subsection (m) of this Section.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form OCA-GR-1-A by completing the applicable box in the second level section on Form OCA-GR-1-A. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form OCA-GR-1-A and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within two business days of receipt of the second level response, the LGC contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has two business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form OCA-GR-1-A, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution, the target date of the second level decision-making, or both, a facility or provider grievance, with the exception of grievances of Hissom class

members, is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(4) Within two business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance coordinator for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance coordinator can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by e-mail, using the e-mail address *oca.grievances@okdhs.org.

340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within two business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance coordinator, Form OCA-GR-1-A, Local Grievance Coordinator Worksheet, attaching the corresponding Form OCA-GR-1, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form OCA-GR-1-A is submitted to OCA, it has attached:

- (1) the corresponding Form OCA-GR-1;
- (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and
- (3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within three business days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within two business days of receipt of OCA's

letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three business days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form OCA-GR-7, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten business days. The advocate general may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of Form OCA-GR-7. A copy is sent to the advocate general. The state office administrator attaches his or her response to Form OCA-GR-7 and includes:

- (1) the proposed resolution and how it is to be implemented;
- (2) the person(s) responsible for implementing the proposed resolution;
- (3) the target date for the proposed resolution;
- (4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and
- (5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance coordinator monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance coordinator immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee contacts the grievant within two business days of receipt by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form OCA-GR-7 and returns it to the OCA grievance coordinator within two business days. Upon receipt by OCA of Form OCA-GR-7, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form OCA-GR-4, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or

(B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (F), the LGC informs the foster parent why the grievance is not being processed, using Form OCA-GR-8-D, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

(A) a decision of a court;

(B) findings of a child abuse and neglect investigation or assessment in a foster

home. The process for appealing these findings is found at OAC 340:75-1-12.2;

(C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;

(D) disputes with other foster parents;

(E) written plans of compliance. The foster parents provide their written input on the compliance documentation; and

(F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6.

(3) **Grievances alleging retaliation.** Grievances alleging retaliation or discrimination, as those terms are defined in OAC 340:2-3-46(c), are processed in accordance with that Section.

(4) **Grievances alleging discrimination.** If a grievance alleges discrimination based on sex, age, national origin, religion, color or disability, the grievant is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator, and so informs the grievant.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

340:2-3-62. Grievance and Abuse Review Committee(GARC) review of Office of Client Advocacy (OCA) investigation reports

(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation with the exception of cases involving a community services worker that are processed in accordance with OAC 340:100-3-39.

(b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis of the review and the reasons review is requested. Supporting documentation for the request for review is included with the request.

(1) With regard to investigations involving a facility operated by OJA or under contract with the Office of Juvenile Affairs (OJA), a request for GARC review may be made by the facility administrator, the OJA advocate general, or the executive director of OJA. If a request is made by a facility administrator, he or she sends a copy of the request to the executive director of OJA.

(2) With regard to investigations involving Oklahoma Department of Human Services (OKDHS) operated facilities and facilities which contract with OKDHS, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the OKDHS Director. If a request is made by a facility administrator, he or she sends a copy of the request to the applicable state office administrator.

(3) With regard to investigations involving a Hissom class member that result in a not confirmed finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services Division (DDSD) director or designee.

(4) With regard to investigations involving a facility operated by the Department of Rehabilitation Services (DRS), a request for GARC review can be made by the facility administrator or the DRS director.

(5) With regard to all other investigations conducted pursuant to OAC 340:2-3-32, a request is made by the facility administrator.

(6) The advocate general also can request GARC review.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.

(1) GARC does not consider prior unsubstantiated allegations.

(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and their designees may attend the GARC meeting. The OCA investigator involved in a case being reviewed, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the chair of GARC.

(3) If an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.

(2) If in GARC's opinion the evidence is sufficient to confirm maltreatment, the report specifies the maltreatment found to have occurred, the specific acts constituting the maltreatment, the dates and places the conduct occurred, the rules, policies, and statutes violated, and the nature of any injury to the alleged victim(s).

(3) GARC's recommendation as to any action needed to protect the victim and other clients.

(4) Areas of concern identified during GARC's review of the case regarding facility or OKDHS practices or procedures.

(e) **OKDHS Director's review.** The advocate general submits to the OKDHS Director

the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of the GARC report, the OKDHS Director decides whether to:

- (A) adopt GARC's findings;
- (B) adopt GARC's findings with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.

(3) OCA notifies in writing all interested parties of the result of the OKDHS Director's review.

(f) Routing the results of the OKDHS Director's review.

(1) In cases involving OKDHS operated facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two business days of receipt of the OKDHS Director's decision, the administrator informs each accused employee of the result of the OKDHS Director's review.

(2) In cases involving private or non-OKDHS operated public facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation, the GARC report and results of the OKDHS Director's review are sent to the chair of the facility's board of directors.

(g) Response to results of the OKDHS Director's review. After receipt of the results of the OKDHS Director's review of an OCA investigation involving an OKDHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action in accordance with OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the OKDHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any

corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.

340:2-3-63. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports regarding foster parent complaints

(a) **Application.** At the request of the Oklahoma Department of Human Services (OKDHS) Director, GARC reviews an OCA investigation report involving allegations of discrimination and retaliation investigated by OCA in accordance with OAC 340:2-3-38.

(b) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) investigated by OCA.

(1) Within three business days of receiving a request for GARC review from the OKDHS Director, the advocate general or designee informs the foster parent(s), the applicable state office administrators and the administrator of any affected child placing agency.

(2) GARC does not consider prior unsubstantiated allegations.

(3) The foster parent, the applicable administrator, affected state office administrators, or their designees, may attend the GARC meeting. The level of participation of attendees is within the discretion of the chair of GARC.

(4) If a foster parent or an administrator wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, additional evidence can be submitted to the advocate general no later than eight business days before the GARC meeting.

(5) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(c) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes:

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm retaliation or discrimination occurred and the basis for GARC's opinion;

(2) if in GARC's opinion the evidence is sufficient to confirm retaliation or discrimination, the report specifies whether retaliation, discrimination, or both occurred and the specific acts constituting the retaliation or discrimination; and

(3) areas of concern identified by GARC during its review of the case regarding practices or procedures of the child placing agency or OKDHS.

(d) **OKDHS Director's response.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of GARC's report, the OKDHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 business days of receipt of a GARC report, GARC's opinion with regard to the finding(s) becomes final.

(e) **Notification of final result.**

(1) The advocate general provides notice of the final result of the OKDHS Director's request for GARC review to affected state office administrators and the applicable foster parent(s).

(2) Within two business days of receipt of this notification, a state office administrator responsible for an employee named in the allegation informs each such employee of the final result of GARC's review.

(3) Within 20 business days of receipt of this notification in a report which confirms retaliation or discrimination, the state office administrator informs the advocate general in writing if any personnel action has or will be taken with regard to an employee, and of any corrective action taken or to be taken with regard to areas of concern noted in the GARC report.

PART 9. OMBUDSMAN PROGRAMS

340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general

(a) Legal authority.

(1) Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred this responsibility on the Office of Client Advocacy (OCA).

(2) Orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound et al. v. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E, require OKDHS and OCA to provide ombudsman and advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) OKDHS also has conferred on OCA other advocacy responsibilities as outlined in this Part of this Subchapter.

(b) **Scope.** OCA provides advocacy services to clients of the OKDHS Developmental Disabilities Services Division (DDSD) listed in this subsection, who are collectively referred to as "clients" in this Part of this Subchapter.

(1) OCA's advocacy services for residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer) are outlined in greater detail in Section 72 of this Subchapter.

(2) OCA's advocacy services for former residents of SORC, NORCE, and Greer for whom the director of the facility is guardian ad litem (GAL) are outlined in greater detail in Section 73 of this Subchapter.

(3) OCA's advocacy services for Hissom class members are outlined in greater detail in Section 74 of this Subchapter.

(4) OCA provides advocacy services on a short-term or emergency basis for other DDSD clients who have a special advocacy need pursuant to Section 75 of this Subchapter.

(c) **Mission statement and guiding principles.**

(1) **Mission statement.** OCA's advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDSD services.

(2) **Guiding principles.** In addition to those listed in OAC 340:100-1-3.1, the guiding principles for OCA's advocacy on behalf of clients are listed in (A) through (D) of this paragraph.

(A) **Self-determination.** Advocates promote the individual as the driving force of life choices and decisions.

(B) **Meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(C) **Active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community.

(D) **Well-being.** Advocates promote access to physical and emotional supports necessary for a healthy life-style.

(d) **Definitions.** In addition to the definitions in Section 2 of this Subchapter, the following words and terms when used in Sections 71 through 75 shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Behavior Review Committee"** or **"BRC"** means the BRC established pursuant to OAC 340:100-3-5 and 100-3-5.1 and defined in OAC 340:100-1-2.

(2) **"Guardianship assessment"** means the process of determining an individual's capacity to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, in accordance with OAC 340:100-1-2.

(3) **"Human Rights Committee"** or **"HRC"** means the HRC created by OAC 340:100-3-6 and defined in OAC 340:100-1-2.

(4) **"Individual plan"** or **"IP"** or **"plan"** means an individual plan established pursuant to OAC 340:100-5-51.

(5) **"Informed consent"** means informed consent as defined in OAC 340:100-1-2.

(6) "**Program coordinator**" or "**PC**" means a program coordinator as defined in OAC 340:100-1-2.

(7) "**Qualified Mental Retardation Professional**" or "**QMRP**" means a QMRP as defined in OAC 340:100-1-2.

(8) "**Service review**" means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.

(9) "**Unit coordinator**" means a team leader as defined in OAC 340:100-1-2.

(e) **Confidentiality.** Information in OCA's records relating to advocacy services provided to the clients listed in subsection (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records. ■ 1

(1) The confidentiality provisions of OAC 340:100-3-2 apply to OCA's client files.

(2) The confidentiality provisions of OAC 340:5-1-5 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult as those terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes.

(3) A breach of confidentiality may result in a criminal prosecution. Violations by OKDHS employees can also result in personnel action.

(f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with their background and experience. ■ 2 This includes training on the rights of DDSD clients under Oklahoma and federal law. ■ 3

(g) **Client representation.**

(1) OCA maintains offices on campus at SORC and NORCE, and assigns advocates to represent residents of SORC, NORCE, and Greer.

(2) OCA assigns advocates, in accordance with this Part of this Subchapter, to represent specific DDSD clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC, NORCE,

and Greer for whom the facility director is the GAL. ■ 4 & 5

(3) An OCA advocate is knowledgeable about the clients represented by him or her and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the preferences and choices of a client. An advocate becomes familiar with a client by:

(A) reviewing relevant client records and files;

(B) visits and other contacts with the client at home, at work, and in other contexts; and

(C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.

(h) **OCA ombuds and advocacy services.**

(1) **Advocacy.** Advocacy is the function of assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination, and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by OCA's advocates include:

(A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;

(B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;

(C) encouraging the development of natural supports, including friends, coworkers and neighbors in the community in which an individual lives; and

(D) advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues to the attention of those who are responsible for correcting the situation. ■ 6

(2) **Monitoring.** OCA monitors the well-being and provision of services to a client by means of: visits and other forms of contact with the client, staff, family members, and others who know the client; review of records, documentation, contracts, and financial agreements between clients and providers of services, incident reports,

and professional assessments; and attendance at IP and other team meetings. OCA's advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, in accordance with the laws and rules relating to client confidentiality and release of information protocols. The monitoring role of an OCA advocate is to ensure that:

- (A) individual needs, preferences, and choices are identified and met appropriately and consistently;
- (B) health, safety, and welfare standards and safeguards are maintained; and
- (C) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.

(3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally. An advocate uses the problem resolution activity consistent with the nature and imminence of the problem. An advocate assists a client in development of problem resolution skills and self-advocacy. ■ 7

(4) **Grievances.** As needed, an OCA advocate files grievances on behalf of clients in accordance with Part 5 of this Subchapter. OCA also advises clients and assists them with filing grievances on their own behalf when they so desire. ■ 8

(5) **Protection and safety.** OCA staff take appropriate action under the circumstances to protect the health, safety, and well-being of clients, including reporting allegations of abuse, neglect, maltreatment, and exploitation in accordance with Part 3 of this Subchapter. ■ 9

(A) OCA advocates assist OCA and Adult Protective Services investigators and law enforcement officers in obtaining information necessary for completion of investigations in which a client is an alleged victim.

(B) Advocates engage in appropriate follow-up activity in response to receiving a referral from OCA's intake unit in accordance with Section 35(a)(7) of this Subchapter.

(C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated QMRP, as applicable, and others (for example, DDSD

staff, provider or facility staff, treatment staff, and health care professionals) as the circumstances warrant.

(D) Immediately upon becoming aware of any concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider as well as the client's case manager.

(E) An OCA advocate ensures that allegations of abuse, neglect, maltreatment, and exploitation of which the advocate becomes aware are reported to OCA intake in accordance with Section 33 of this Subchapter.

(6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, through provision of necessary information and assisting a client in understanding options and potential consequences of a decision. If a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, GAL, volunteer advocate, and other representative(s) with access to information to make an informed decision on behalf of the client. The advocate general does not provide legal advice to clients, but may provide information about the law.

(7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights, including ensuring those rights are considered in team decisions and in the manner with which team decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving a client which might result in a rights restriction. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible and a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports in accordance with the requirements of state and federal programs. Although an advocate takes a position with regard to services needed by a client, an advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship Act promotes the participation of persons as fully as possible in the decisions which affect them, development of maximum self-reliance and independence, and appointment of guardians and others only to the extent necessitated by the mental and adaptive limitations or other condition of individuals. [30 O.S. § 1-103] Because a full guardianship of the person and estate of a client is the most restrictive intrusion on

an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship that is feasible under the circumstances, including but not limited to: limited guardianship; representative payee for financial benefits; volunteer advocate; supportive friends and family; health care proxy; durable power of attorney; and advance directives.

(10) **Promoting inclusion.** An advocate promotes the realization of active citizenship and inclusion in the community. This includes but is not limited to encouraging clients to: learn the rights and responsibilities of good citizenship, vote, take classes, participate in volunteer service organizations, attend religious services of the client's choice, attend recreational, cultural and social events, and join citizen advocacy organizations that promote inclusion in the community. An advocate encourages the development of friends who can serve as natural supports for a client. An advocate assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental disability do not differ from those of the community at large. Regardless of the medical circumstance which bring these issues to the forefront, an OCA advocate seeks to have physicians, guardians, and loved ones of a client adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's wishes, an advocate presumes the client would choose life sustaining measures. ■ 10

(i) **On-call advocate.** OCA advocates carry pagers or cell phones during office hours. If an advocate is not available during office hours, his or her supervisor serves as a back-up to the advocate and can be contacted. Information about the name of the advocate assigned to a client, the advocate's phone and pager numbers, and the name of the advocate's supervisor can be obtained from OCA's offices in Oklahoma City 1-405-525-4850, 1-800-522-8014 and Tulsa 918-732-7543. After hours, weekends, and holidays, an advocate is assigned to serve as the on-call advocate 24 hours a day. The on-call advocate can be contacted by cell phone 1-405-203-6056. ■ 11

(j) **OCA access to client records and information.** OCA staff are provided access to all records, files, documents, and information needed to fulfill OCA's responsibilities regarding a client. DDS case managers and employees and staff of provider agencies send to the assigned OCA advocate a copy of documents and notices sent to the client.

INSTRUCTIONS TO STAFF

1. **Office of Client Advocacy (OCA) files.** OCA maintains a client file for each Hissom class member and other Developmental Disability Services Division (DDSD) client served by OCA who is not a resident of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer) except for persons provided short-term advocacy pursuant to OAC 340:2-3-75. Each client file contains documents for the previous two year period. Documents older than that are purged, with the exception of client histories. Documents which OCA originated and which do not exist in an electronic form are archived. Other purged documents are shredded by OCA.

2. **Training of advocates.**

(1) Before a new OCA advocate is assigned to represent clients, the advocate attends DDSD's Foundations Training or its substantial equivalent, unless the advocate previously completed that training, and receives on-the-job training regarding:

(A) the Vulnerable Adults Act, Sections 10-101 et seq. in Title 43A of the Oklahoma Statutes, and in particular the reporting obligations in Section 10-104 of that Act;

(B) OCA's policies and directives, including OCA's mission statement and guiding principles;

(C) problem resolution skills;

(D) DDSD policies and relevant Oklahoma Health Care Authority policies;

(E) relevant court orders relating to Hissom class members;

(F) end-of-life decision-making and Sections 3080.1 et seq. (Hydration and Nutrition for Incompetent Patients Act), 3101.1 et seq. (Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act), and 3131.1 et seq. (Oklahoma Do-Not-Resuscitate Act) of Title 63; and Sections 1071 et seq. (Uniform Durable Power of Attorney Act) of Title 58 of the Oklahoma Statutes;

- (G) the rights of DDSD clients under Oklahoma and federal law;**
 - (H) resources available to DDSD clients, including resources to protect client rights;**
 - (I) the fair hearing process;**
 - (J) applicable service agreements;**
 - (K) the Health Care Coordinator instructional video;**
 - (L) the Case Manager Self-Study Manual; and**
 - (M) the Health Insurance Portability and Accountability Act (HIPAA) online training.**
- (2) Within 180 calendar days of being assigned to represent clients, a new OCA advocate attends the following DDSD training or their substantial equivalent:**
- (A) Effective Teaching and Learning (ETL) I;**
 - (B) Individual Planning;**
 - (C) Contemporary Practices in Habilitation Therapy; and**
 - (D) Guardianship.**
- (3) Within 12 months of being assigned to represent clients, a new OCA advocate attends the following DDSD training or their substantial equivalent:**
- (A) Quality Assurance;**
 - (B) Mealtime Challenges;**
 - (C) Medication Administration Technician (MAT) Training;**
 - (D) Dyskinesia Identification Scale Condensed User Scale (DISCUS);**
 - (E) Physical Assistance; and**

(F) ETL II.

(4) During each subsequent year of service as an OCA advocate, an advocate completes 18 hours of relevant training as determined by the advocate general or designee. OCA advocates attend bi-monthly in-service training which bi-annually include presentations on the following topics:

(A) guardianship;

(B) end-of-life issues;

(C) service reviews and contact sheets;

(D) grievances and informal problem resolution;

(E) consumer finances;

(F) abuse and neglect reporting and referrals to advocate;

(H) responsible sexual choices;

(I) Methods of Protective Intervention (MOPI);

(J) hospitalization supports;

(K) arch mods;

(L) heat and cold weather issues;

(M) MAT, self-administration of medication, employment services;

(N) related issues; and

(O) DISCUS refresher.

(5) An OCA advocate attends the DDSD training on guardianship every three years.

(6) Before an OCA advocate assumes responsibility for a client, the advocate reviews the OCA client file, discusses the case with the previous

advocate when possible, and becomes familiar with essential information about the client including specialized supports, rights restrictions and intrusive procedures, and pending informal problem resolution activities and grievances. The advocate also completes individual specific training when the advocate's supervisor or the OCA community ombuds programs administrator determines that it is warranted.

3. **Client rights.** Source of information about a client's rights include but are not limited to: OAC 340:2-5-40, OAC 340:100-3-1.2; OAC 317:35-13-1, and OAC 612:10-1-16; the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. § 6000 et seq.]; Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794]; the Americans with Disabilities Act [42 U.S.C. § 12101 et seq.]; and the Civil Rights of Institutionalized Persons Act [42 U.S.C. § 1997 et seq.].
4. **Scope of representation.** In assigning advocates to represent clients, OCA avoids actual or perceived conflicts of interest which could prevent an advocate from being objective about the interests and preferences of a client. For example, an OCA advocate is not assigned to represent an individual who is related by blood or marriage to the advocate, or to represent an individual who is receiving services from a person related to the advocate. Advocates comply with OAC 340:2-1-8 the Rules of the Ethics Commission, and Oklahoma Law. [74 O.S. Chapter 62] An advocate represents the client's interests independent of the advocate's own biases, preferences, and belief systems. In advocating for the client's interests and preferences, an advocate does not support any action by the client or others which constitutes criminal activity or places the client at imminent risk of serious harm. An advocate supports providing clients with information necessary for informed and voluntary decision-making with knowledge of the potential consequences of a decision. The advocate explores with the client and the client's team alternatives which minimizes risk of harm to health, safety, or well-being of the client.
5. **Transition process when a class member is assigned to a different advocate.** In order to ensure OCA advocates are given timely and adequate notice of team meetings, emergency meetings, and similar type meetings, appropriate persons are informed whenever there is a change in the advocate assigned to support a class member or other DDSD client. The procedures when a different OCA advocate is selected for a client are listed in (1) through (7) of this Instruction.

(1) The former OCA advocate sends an e-mail to the case manager for the

client and the case manager's supervisor to inform them of the change. The e-mail includes: the name of the new OCA advocate, his or her e-mail address and duty station, the effective date of the change, and a request that notices of meetings and information henceforth be sent to the new advocate. This e-mail is copied to the receiving advocate and his or her supervisor as well as the former advocate's supervisor. To ensure the information in the e-mail has been communicated, the former advocate also mails or sends by FAX a printed copy of the e-mail to the case manager or contacts the case manager by phone.

(2) The supervisor of the former OCA advocate immediately sends an e-mail to OCA's transition coordinator to inform him or her of any changes in assignments. The transition coordinator immediately makes the change on the FY 2001 Hissom list.

(3) The former OCA advocate sends an e-mail to the receiving advocate notifying him or her of the dates of any meetings, other events, and deadlines which are pending, with special attention given to scheduled individual plan (IP) meetings. The e-mail also provides information about informal problem resolution activities on behalf of the client which are still pending, any pending grievances, and other pertinent information about the client and the client's team. This e-mail is copied to the receiving advocate's supervisor.

(4) The new OCA advocate contacts the case manager to discuss the status of the case and determine any pressing issues that may need attention.

(5) Within two weeks of the change in assignment, the former OCA advocate and the receiving advocate confer by telephone or in person, at which time the former advocate briefs the receiving advocate about the client and any pending matters of note.

(6) Within two weeks of the change in assignment, the former OCA advocate's supervisor transmits to the receiving advocate's supervisor the client's file, which is organized logically and neatly, and contains all information in the former OCA advocate's possession about the client. A completed "Case File Transition Checklist" is attached. The receiving supervisor notes the date and time of receipt of the client's file, by confirming receipt in an e-mail and noting it in the client file.

- (7) When possible, the former OCA advocate has a transition meeting with the client to explain the change and to introduce the client to the receiving advocate. If such a meeting is not possible, the client, guardian(s), and residential and vocational providers are informed of the change by phone, e-mail, or letter.
6. **Role of the advocate in resolving problems.** The OCA advocate utilizes the client's case manager as a primary resource for resolving a client's support deficiencies. The role of the advocate is to report service deficiencies to those responsible for providing the service. However, an advocate takes immediate action appropriate under the circumstances in situations where the client is at imminent risk of harm, for example, preventing staff from using a defective piece of adaptive equipment. Following an action of this nature, the advocate immediately notifies the DDSD case manager, the case manager's supervisor, or the DDSD on-call administrator to report the circumstances that prompted the advocate's action and to request prompt follow-up to address the situation and to prevent reoccurrence. An OCA advocate does not function as a case manager or a provider of direct contact services for a client.
7. **Informal problem resolution.** Informal problem resolution activities include but are not limited to:
- (1) contact with the case manager, seeking to resolve problems at the lowest possible level of administrative responsibility;
 - (2) requesting a team meeting;
 - (3) identifying and articulating client concerns during team meetings;
 - (4) acting to facilitate resolution of a problem;
 - (5) representing the preferences of the client in team meetings if known and capacity is not an issue;
 - (6) facilitating informed-consent decision-making by the client or guardian(s);
 - (7) identifying acceptable alternatives;
 - (8) filing an advocate's inquiry in accordance with OAC 340:2-3-51 or

340:2-3-52, whichever is applicable;

(9) advocating for proper implementation of state and federal laws and for changes in Oklahoma Department of Human Services (OKDHS) rules;

(10) facilitating information and referral on the client's behalf either with OKDHS personnel or other persons or entities who can provide problem resolution or support services; and

(11) assisting with making arrangements for mediation.

- 8. Grievances.** When an OCA advocate files a grievance against OKDHS on behalf of a Hissom class member, the grievance format used includes at a minimum: the name of the client, the grievant if other than the client, the client's guardian if there is one, the provider, the case manager, the OCA advocate, and the guardian ad litem (GAL) representative if there is one; the issue being grieved, the facts relevant to the grievance; the grievant's contentions; relevant statutes, policies, and other authorities; the proposed solution; and the advocacy position of OCA. For each subsequent level the grievance is submitted for resolution, the grievance format used also provides the procedural history of the grievance, including a summary of the responses to the grievance at each level it was considered and relevant documentation.
- 9. Informing clients, guardians, caretakers, and others of OCA investigations.** Sections 10-105.1 and 10-110(B)(5) of Title 43A, Oklahoma Statutes require OKDHS to provide notice to guardians, caretakers, custodians, and family members of vulnerable adults when a referral is received about a vulnerable adult, and to provide a summary of the investigation findings. To the extent this applies to referrals to OCA regarding Hissom class members residing in the community, DDS policy [OAC 340:100-3-34] requires the provider agency to notify the guardian or family member when a referral is made to OCA about a class member. In order to ensure guardians and family members are aware of relevant information regarding their wards and relatives, OCA advocates adhere to the procedures listed in (1) through (6) of this Instruction for each Hissom class member represented by OCA.

(1) The OCA advocate assigned to a client informs the client and the client's guardian or GAL of the results of OCA investigations which involve the client. If an individual does not have a GAL or guardian, a parent or other family member actively involved in the individual's life may be informed. If the guardian or family member is the alleged perpetrator in the

investigation, the OCA advocate's responsibility to inform him or her of the results does not change.

(2) The OCA advocate provides this information to the guardian or active family member by telephone, in person, or by sending a letter, using the method of communication suitable for the particular situation.

(3) This information is provided as soon as practicable, but no later than seven working days after an OCA investigation finding has become final. An investigation involving a Hissom class member is considered "final" if the allegation:

(A) is not against a community services worker (CSW), the date the investigation report is approved by the advocate general;

(B) involves a CSW and is ruled out, the date OCA sends the notice to the CSW pursuant to OAC 340:100-3-39(h)(1) informing the CSW that the allegation was ruled out;

(C) involves a CSW and is confirmed, the date OCA sends a letter to the CSW pursuant to OAC 340:100-3-39(h)(B) informing the CSW of the result of the CSW's reconsideration request, or the date which is the deadline for the CSW to request reconsideration when none was timely received by OCA. If reconsideration has been denied, a CSW has the right to request a hearing before an administrative law judge to review OCA's findings before his or her name is placed on the CSW Registry, in accordance with OAC 340:100-3-39(h)(5). Hence, when informing a client, guardian, or family member of the results of the investigation, the advocate clearly states that OCA's finding is provisional subject to further administrative review. OCA's advocates are familiar with the CSW Registry and related policies in order to answer questions clients, guardians, and family members have about it.

(4) The advocate only provides a summary of the findings of an OCA investigation. In accordance with OCA's statutory obligations to maintain confidentiality, copies of OCA investigation reports are disseminated in accordance with Section 32(b) of this Subchapter.

(5) In providing a summary of the findings, confidentiality of information regarding minors and DDS clients is maintained. In addition, the identity of persons reporting incidents which are referred to OCA is confidential by

statute and is not disclosed.

(6) Briefings of guardians and family members about OCA investigative findings are documented in a contact sheet in OCA's computerized database.

10. **Guardian's authority to make end-of-life decisions.** A guardian does not have authority to consent to a do-not-resuscitate (DNR) order merely because he or she is a guardian of a ward. Oklahoma's Guardianship Act requires a guardian to obtain a specific court order which authorizes the guardian to make DNR decisions on behalf of a ward. [30 O.S. § 3-119(1)] In the absence of an order, a guardian can only communicate to a physician facts about the known values and preferences of the ward, on the basis of which the physician can determine whether there is clear and convincing evidence of the client's desires with regard to a DNR order. If a client has never had the ability to communicate, verbally or non-verbally, the client's wishes with regard to end of life issues, clear and convincing evidence does not exist.

11. **The on-call advocate.** The role of the on-call advocate is to assist the caller by providing information about the role of OCA and OCA policies and procedures. The advocate also provides information about issues relating to abuse, neglect, and exploitation.

(1) The cell phone is kept on at all times before and after work hours, weekends, and holidays. The phone has a voice-mail feature in the event the on-call advocate is talking to someone when another call comes in. If the on-call advocate receives a voice-mail message requesting a return phone call, that is done immediately. If the advocate is unable after two attempts to reach the on-call case manager, the advocate calls the 24-hour number for the respective area office and leaves a message that he or she has attempted, unsuccessfully, to return the call.

(2) The on-call advocate obtains information from a caller and enters the phone call on the on-call log.

(3) The on-call advocate sends a separate e-mail by 9:00 a.m. to each OCA advocate assigned to Hissom class members about whom a call was received since the close of the previous business day.

(4) When the on-call advocate receives a call regarding a hospital admission or emergency room treatment for a Hissom class member, the

on-call advocate assesses the need to contact the advocate assigned to the class member or that advocate's supervisor.

(5) When alleged abuse, neglect, or exploitation is reported, the on-call advocate asks if the referral has been made to OCA intake, and follows-up the next working day to ensure a report has been made to OCA's intake.

(6) If the on-call advocate is made aware of a potentially volatile situation or a circumstance which poses a substantial risk to the health or safety of the individual which appears to not be receiving appropriate attention, the OCA advocate assigned to the individual is contacted immediately. If contact cannot be made with the assigned advocate, the supervisor of the assigned advocate is contacted. The supervisor assesses the situation and gives suggestions, and can agree to provide follow-up as needed. The supervisor contacts the advocate general or the applicable OCA programs administrator as warranted.

340:2-3-72. Advocacy services for residents of Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes ombudsman and advocacy services the Office of Client Advocacy (OCA) provides to residents of SORC, NORCE, and Greer ("the facilities"). Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred on OCA this responsibility. Ombudsman and advocacy services are provided to residents of the facilities consistent with Section 71 of this Subchapter.

(b) **Grievance coordination.** OCA's advocates serve as grievance coordinators for resident grievances in accordance with Section 51 of this Subchapter.

(c) **Abuse and neglect reporting.**

(1) OCA's advocates provide training to new employees of SORC, NORCE, and Greer regarding their obligation to report suspected incidents of abuse, neglect, verbal abuse, and caretaker misconduct in accordance with Section 33 of this Subchapter.

(2) OCA's advocates receive referrals of suspected abuse, neglect, and maltreatment, and immediately transmit that information to OCA intake in accordance with Section 33 of this Subsection.

(d) **Advocacy and monitoring.** OCA's advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of residents. In addition to the activities described in Section 71 of this Subchapter, advocacy and monitoring activities at the facilities include:

(1) a face-to-face visit with each resident at least annually, and more frequently as indicated, to assess the resident's advocacy needs;

(2) periodic site visits to facility buildings frequented by residents, including residential units, vocational programs, canteen, and therapy departments, at least quarterly and more frequently as warranted to monitor compliance with health and safety requirements and protection of client rights, including but not limited to privacy rights; ■ 1

(3) a visit with a resident at the request of the resident, the resident's guardian, or

other person concerned about the well-being of the resident unless contraindicated;

(4) review relevant documentation within seven calendar days of receipt, including but not limited to: individual plan (IP) and interim IPs; accident and incident reports; OCA investigation findings; and behavior data collection forms, guardianship assessments, and other professional reports and assessments;

(5) serving as a member of a resident's personal support team;

(6) attending team meetings when it can reasonably be anticipated that a significant issue will be addressed, including any rights issue and in particular a rights restriction or an intrusive behavior intervention strategy; ■ 2

(7) participating in Guardianship Assessment meetings and annual reviews;

(8) attending facility Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;

(9) attending Death Review meetings pursuant to OAC 340:100-3-35;

(10) promoting team discussion of alternatives to living in the facility, and consulting with teams regarding community supports and community residential alternatives; ■ 3

(11) participation in discharge planning meetings;

(12) when a resident who has been discharged from the facility is not eligible for assignment of an OCA advocate in the community, providing transition advocacy assistance for 90 calendar days from the date the resident moves out of the facility. The 90 days can be extended by the advocate general or designee as warranted; and

(13) reporting, for administrative action and correction, policy violations to the facility director or quality assurance designee.

INSTRUCTIONS TO STAFF

- 1. Office of Client Advocacy (OCA) advocates document monitoring activities on contact sheets in the OCA computerized database, selecting "monitoring" in the activity field.**
- 2. Attendance by OCA advocates at meetings involving the implementation of a**

level 3 or 4 behavior intervention strategy is encouraged.

- 3. The nature and scope of advocacy on behalf of residents for transitioning from the facility to a community residential placement is determined on a case by case basis in light of the unique circumstances of the individual.**